TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 83.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

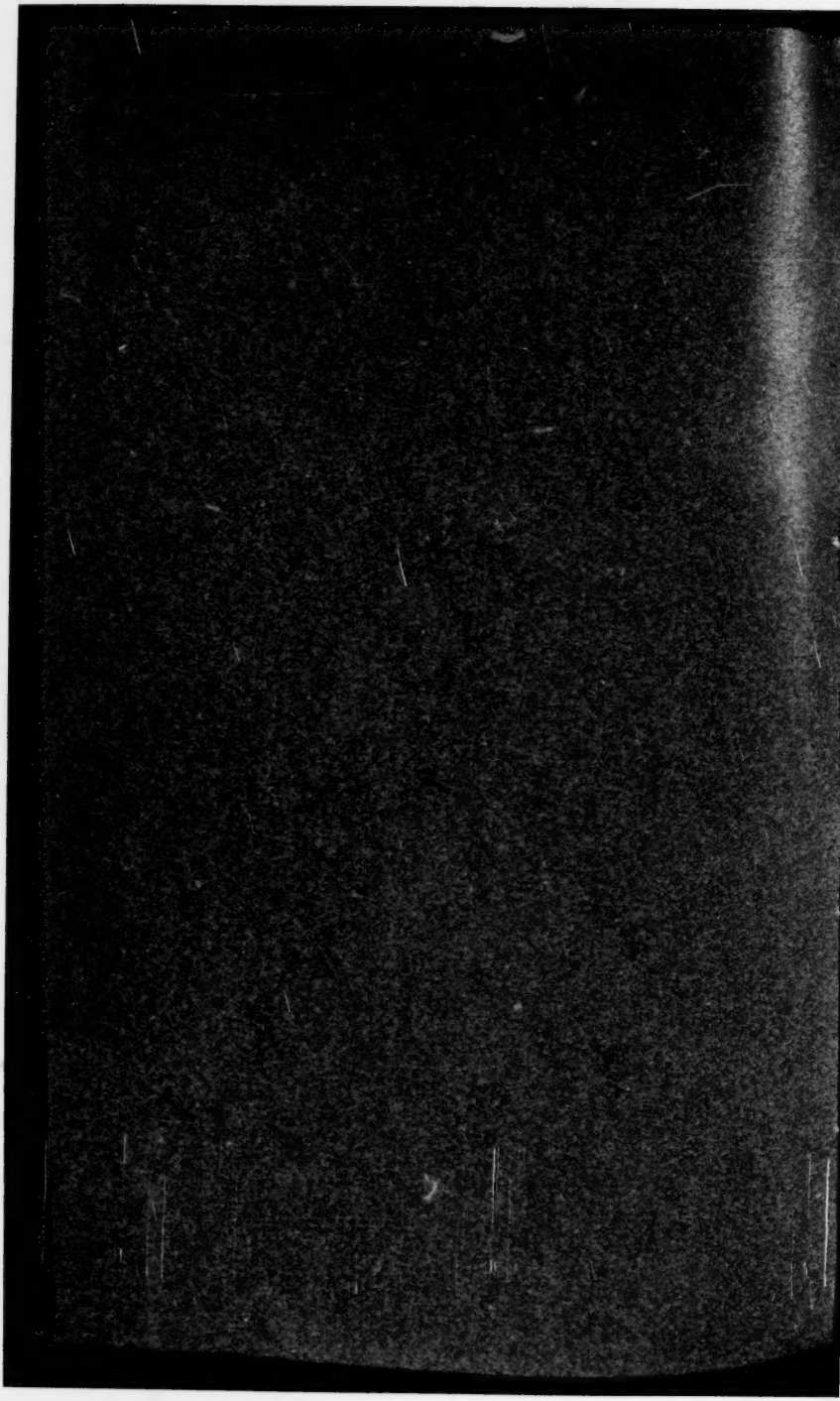
vs.

LINDA Y. SPRATLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED OCTOBER 12, 1897.

(16,687.)



(16,697.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 484.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

LINDA Y. SPRATLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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a Chancery Court of Shelby County.

CONNECTICUT MUTUAL LIFE INSURANCE CO.
vs.
LINDA Y. SPRATLEY. } No. 10365.

Estes & Fentress, attorneys for complainant.
Turley & Wright, attorneys for defendant.
R. H. Beard, C. & M.

Filed April 3, 1897.

JNO. W. BUFORD, *Clerk.*

1 Chancery Court of Shelby County.

STATE OF TENNESSEE, }
Shelby County. }

Be it remembered that at a term of the chancery court of Shelby county, State aforesaid, begun and held at the court-house, in the city of Memphis, in and for said county, on Monday, the 5th day of October, 1896, the same being the first Monday in October, 1896—present and presiding, the Hon. John L. T. Sneed, chancellor of said court—the following proceedings were had, to wit:

Injunction Bill.

Filed 10th Day of October, 1896.

In the Chancery Court of Shelby County, Tennessee, Part 1.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, Complainant,
vs.
LYNDA Y. SPRATLEY, a Resident of Shelby County, Tennessee, Defendant.

To the Hon. John L. T. Sneed, chancellor:

Complainant, The Connecticut Mutual Life Insurance Co. of Hartford, complaining of the defendant, Lynda Y. Spratley, represents and shows:

1st. That it is a corporation duly chartered by and organized under the laws of the State of Connecticut; that its business situs is and has been since its organization Hartford, Connecticut; that the defendant is a resident of the State of Tennessee.

2nd. That at the May term, 1896, and on or about July 2nd, 1896, the defendant pretends that she recovered a judgment against the complainant in the circuit court of Shelby county, Ten-
2 nessee, for the sum of eight thousand one hundred dollars and costs of suit, on two policies of insurance purporting to have been issued to the complainant on the life of Benjamin R. Spratley.

A copy of said judgment is filed as Exhibit No. 1 to this bill, which will show the purport thereof.

3rd. That the said defendant has caused an execution to be issued on said judgment to the sheriff of Shelby county, who, at her instigation, is garnishing certain policy-holders of the complainant company to answer what they owe the company for premiums on these policies. By this means she is disturbing and harassing complainant's said policy-holders and endangering their rights under their policies. The premiums to become due on said policies are not payable in Tennessee and are not, in fact, paid in this State, where complainant has an agent or representative to receive payment. The said premiums are payable legally at the home office, in Hartford, Connecticut, but for some years past complainant has permitted the payment thereof to be made to its agent in Louisville, Kentucky, where they have in fact been paid. By the terms of all the policies the failure of the policy-holders to pay their annual premiums promptly is a cause of the forfeiture of their policies, and thus these garnishments endanger the rights of the policy-holders, and the conduct of the defendant in this behalf is inequitable and oppressive.

4th. Complainant alleges that said policies upon which said judgment was rendered were obtained by the assured upon false and fraudulent representations, and on this and other grounds they were void. There is nothing due the defendant on said policies or on said judgment, and the attempted enforcement thereof by the means stated above is inequitable and wrongful.

5th. Complainant is advised and alleges that said pretended judgment thus attempted to be enforced is void. The same was rendered against the complainant without legal service of process and was *coram non judice*. Complainant was a non-resident of the State of Tennessee, and had, as the judgment recited, "no regular officer or agency" in Shelby county, and, as complainant
3 alleges, had no office or agent in Tennessee, and had not had for some years preceding the institution of the suit on said policies. In fact, complainant alleges that it had done no business in Tennessee and had no office or agent within the State for several years preceding the said suit, and the said circuit court of Shelby county was without jurisdiction to entertain said suit and to render said pretended judgment, which was a judgment by default and without valid service of process on the complainant. It is untrue, as recited in said judgment, that complainant is or was at the instigation of the suit or has been since doing business in Shelby county or within the State of Tennessee. The summons in said suit purports to have been served "on O. N. Chaffer, special agent" of the company, "he being the highest officer or agent of said company to be found in my county." Complainant never had any agent, general or special, by the name of C. N. Chaffer, and the service of this party was without any pretense of right and utterly unavailing to bind the company.

Complainant did have a special agent for special purposes only, at the date of said pretended service of process, named O. N. Chaffer, who, it is informed, was temporarily in Memphis about that time,

and it may be that the summons was served on him, but complainant distinctly states and charges that he was and is a non-resident of Tennessee; that he was in Memphis but a few days on special business, without any office or place of business in Tennessee, and that he was not the agent of complainant to accept or to be amenable to the service of process against the complainant in Tennessee, and that he never had any such power in any shape, expressed or implied, from the complainant. He was simply a special agent for the investigation, under instructions, of doubtful or contested claims against the company at various places in the United States, and at the time of the alleged service he was temporarily in Memphis on business of this kind, and in no other respect was he the agent or representative of the complainant. He was distinctly employed

"for special service in any matters which might be referred
4 to him, with instructions, during the pleasure of the directors," and not otherwise.

But complainant is advised that in the aforesaid procedure the attempt was made to pursue the provisions of the extraordinary act of the legislature of Tennessee entitled "An act to subject foreign corporations to suit in this State," approved March 29th, 1887, and found on page 386, &c., of the Acts of 1887. Whether there has been a sufficient compliance with the terms of the statute in this case, complainant submits to the court and is willing that the entire record in the circuit-court case may be regarded as a part of this bill in order that the questions now raised on them may be now specially adjudicated; or a certified copy thereof will be filed as an exhibit to this bill. Complainant desires to make the distinct point that said statute is unconstitutional and void, and that the proceedings thereunder, if in strict conformity thereto, are utterly void and were not legal or sufficient service of process on this complainant in the said suit at law. Complainant is advised and charges that said statute is unconstitutional and void, and the attempted service of process thereunder is unavailing and of no effect, and therefore the circuit court in the suit aforesaid obtained no jurisdiction over this complainant, and the pretended judgment is void.

The said statute and procedure were not "due process of law," and the statute and the procedure thereunder violated article V of the amendments to the Constitution of the United States, which provides, among other things, that no person "shall be deprived of life, liberty, or property without due process of law," as well as the 14th amendment to the Constitution of the United States, which provides, *inter alios*, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

5 The said statute and proceedings resulting in said pretended judgment violated other provisions of the Constitution of the United States, as will be shown in the progress of this suit. The said statute and procedure violated also section 17 of article 1 of the constitution of the State of Tennessee, and they are

nugatory and void for all these reasons. Thus it appears that the defendant has, in violation of constitutional restrictions and without due process of law, obtained a judgment by default against this complainant and is seeking by oppressive means to enforce said judgment, all of which is contrary to equity and good conscience. Complainant states that it is a leading life insurance company of the United States of long standing; that it — abundantly solvent and at all times ready and willing to pay every just demand against it, but this demand is unjust, and the attempted means to enforce it without due process of law complainant *it* is determined to resist.

The parties on whom these garnishments have been served are as follows: S. P. Read, J. A. Omberg, J. Schillings, Geo. Cobb, Joseph Fry, Sam'l Gaby, George James, John Overton, Jr., C. N. Grosvenor, G. W. Agee, Stonewall J. York, Dr. D. D. Saunders, J. T. Fargason. The total of their cash annual premiums amount to $741.12. The premises considered, complainant prays that it be permitted to file this bill; that Mrs. Linda Y. Spratley be made party defendant thereto by process returnable to the nearest rule day; that an injunction issue enjoining her, her agent, attorneys, and officers, from further prosecution of the garnishment proceedings against its policyholders, and from issuing or causing to be issued other garnishment or otherwise seeking to collect said judgment, and that all proper interlocutory orders be made, and that on final hearing said injunction be made perpetual, and said judgment and all the proceedings thereunder, as well as the said act of the legislature, be pronounced nugatory and void and the complainant be decreed to be released therefrom, and for all further and other relief; and, as in duty
6 bound, complainant will ever pray.

This is the first application for extraordinary process.

ESTES & FENTRESS,
Sol's for Complainant.
JOHN M. TAYLOR,
JOHN M. TAYLOR,
Vice-President Con. Mutual Life Insurance Company.

STATE OF CONNECTICUT, }
City of Hartford. }

Personally appeared before me, Nathan F. Peck, a notary public in and for the city and State aforesaid, duly commissioned and qualified, John M. Taylor, the vice-president and agent of the Connecticut Mutual Life Insurance Company of Hartford, who makes oath in due form of law that the matters and things alleged in the foregoing bill are true to the best of his knowledge and belief. I certify that my commission as notary public expires on the first day of February, 1898.

Sworn to and subscribed before me on this 5th day of October, 1896.

NATHAN F. PECK,
Notary Public.

The clerk and master of the chancery court of Shelby county will issue a writ of injunction, as prayed in the foregoing bill, upon the execution of an injunction bond, with satisfactory security conditioned as prescribed by law, in the penalty of nine thousand dollars.

October 10th, 1896.

JOHN L. T. T. SNEED,
Chancellor, &c.

EXHIBIT No. 1.

Mrs. LINDA Y. SPRATLEY
vs.
7 CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD.

Came the plaintiff and moved the court for a judgment by default against the defendant for want of appearance or defence herein; and it appearing to the court that the defendant is a corporation organized under the laws of the State of Connecticut, but is doing business in Shelby county, Tennessee, but has no regular office or agency therein; that it issued and delivered in the county of Shelby and State of Tennessee to Benj. R. Spratley, the husband of the plaintiff, the two life-insurance contracts or policies mentioned in the declaration; that the return of the sheriff upon the writ in this cause shows that it was served, on the 15th day of April, 1896, on the defendant by reading the contents of said writ to O. N. Chaffee, special agent of the defendant, he being the highest officer or agent of said company to be found in said county at the time and being in said county on business connected with said life-insurance contracts or policies;

And it further appearing that this return was made on the 4th day of May, 1896, and that immediately the clark of this court mailed a copy of said writ and process to the defendant, at its home office, in Hartford, Conn., by registered letter; and it further appearing that the clerk has filed with the paper herein a certificate of the fact of such mailing and has made a minute thereof upon the docket of this court; and it further appearing that said certificate was filed herein on the 4th day of May, 1896, and the said minute thereof was made on the docket on the same day;

And it further appearing that the plaintiff, from the affidavit of Sylvester C. Hunham, on file herein on behalf of the plaintiff, did, on the 8th day of May, 1896, lodged with John M. Taylor, the vice-president of the defendant, at its home office, in Hartford, Conn., a notice of the bringing of this suit, which notice was accom-
8 panied by a copy of the writ of process herein and return of the sheriff thereon;

And it further appearing that by the writ herein, which was served, as aforesaid, the defendant was summoned to appear before this court on the 3rd Monday of May, 1896, that being the first day of the present term, and then and there to answer this action;

And it further appearing that the said defendant has wholly

failed to make any appearance herein; that the said defendant was solemnly called to come into open court and defend said suit, but failed to do so:

It is therefore ordered that default be and the same is now entered herein against the defendant, and that all allegations of the declaration be and the same are now taken as confessed; and it is further ordered, adjudged, and decreed that the plaintiff have and recover from the defendant the sum of $8,100.00, that being the total amount, principal and interest, due on the life-insurance contracts or policies described in the declaration, and also the costs of the case, for which let execution issue.

Cost Bond.

We, The Connecticut Mutual Life Insurance Company, as principal, and Fidelity & Deposit Company of Maryland, Baltimore, Md., as surety, acknowledge ourselves indebted to Linda Y. Spratley in the sum of two hundred and fifty dollars, to be void if the said Connecticut Mutual Life Insurance Company, complainant in a bill which has this day been filed in the chancery court of Shelby county against the said Linda Y. Spratley, shall pay all *all* such costs as may be awarded against them by the court in its decrees and orders in said cause.

This 10th day of October, A. D. 1896.

CONN. MUTUAL LIFE INS. CO.,
By ESTES & FENTRESS, *Sol's.*
9 FIDELITY & DEPOSIT CO. OF MARYLAND,
By FRANCIS FENTRESS,
Member of Local Board for Tennessee.

Attest: GEO. H. GLASSCOCK, *Agent.*

Injunction Bond.

We the Connecticut Mutual Life Insurance Company, as principal and Fidelity & Deposit Company of Maryland as surety, acknowledge ourselves indebted to Lynda Y. Spratley in the sum of sixteen thousand two hundred dollars.

The condition of the above bond is such, that whereas the said Connecticut Mutual Life Insurance Company, complainant, has this day filed its bill in the chancery court of Shelby county against the said Linda Y. Spratley, defendant, and obtained an order for the issuance of the writ of injunction, is accordance with said order, upon the execution of this bond.

Now, if the said complainant shall pay the amount of the judgment at law men ioned in the bill, with interest, damages and costs, or perform the decree of the court, in case the injunction is dossolved, and also pay such damages as may — sustained by the wrongful suing out of the injunction, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this the 10th day of October, 1896.

CONN. MUTUAL INS. CO.,
By ESTES AND FENTRESS, *Att'ys.*
FIDELITY & DEPOSIT COMPANY
OF MARYLAND,
By FRANCES FENTRESS,
Member of Local Board for Tennessee.

Attest: GEO. H. GLASCOCK, *Agent.*

10 Issued 10th day of October, 1896.

State of Tennessee to Linda Y. Spratley (Turley & Wright, attorneys), agents and attorneys, Greeting:

Whereas the Connecticut Mutual Life Ins. Co. hath lately exhibited its bill of complaint in the chancery court of Shelby county, part 1, against you, the said Linda Y. Spratley, as defendant therein, and obtained from the Honorable John L. T. Sneed, judge, & etc., an order that writs of injunction do issue according to the prayer of said bill:

We therefore, in consideration of the premises, do strictly enjoin and command you, the said Linda Y. Spratley, and all and every person, the persons before mentioned, and each and every of you, that you and every of you do absolutely desist and refrain from further prosecuting garnishment proceedings against the policyholders of the Connecticut Mutual Life Insurance Company under a judgment recovered by you in the circuit court of Shelby county for $8,100.00 against the Conn. Mutual Life Ins. Co., and from issueing or causing to be issued other garnishments or otherwise seeking to collect said judgment until further order of our said court to the contrary.

And this you shall in nowise omit, under the penalty prescribed by law.

Witness R. H. Beard, clerk and master of said court, at office, in city of Memphis, this the first Monday in October, 1896.

R. H. BEARD,
Clerk and Master,
By EDGAR T. McHENRY,
Dep. Clerk & M.

Returned endorsed as follows: Came to hand 10th day of October, 1896, and executed by reading this writ to Linda Y. Spratley October 22, 1896. W. W. Carnes, sheriff.

Subpena to Answer.

Issued the 15th day of October, 1896.

11 The State of Tennessee to the sheriff of Shelby county:

Summon Linda Y. Spratley, if to be found in your county, to appear before the chancery court of Shelby county, part 1, at the

court-house, in Memphis, Tennessee, on the first Monday in November next, then and there to answer the bill of complaint of the Connecticut Mutual Life Insurance Company, a copy of which accompanies this writ. Herein fail not, and have you then and there this writ.

Witness R. H. Beard, clerk and master of said court, at office, in Memphis, this first Monday in October, 1896.

R. H. BEARD,
Clerk & Master,
By EDGAR T. McHENRY,
Deputy Cl'k & M.

Returned endorsed as follows:

Came to hand 15 day of October, 1896, and executed by reading this writ to Linda Y. Spratley, and left with her the copy of bill October 22, 1896. W. W. Carnes, sheriff.

Motion to Dissolve Injunction.

Filed December 23, 1896.

CONNECTICUT MUTUAL LIFE INSURANCE CO.
vs.
LINDA Y. SPRATLEY.

Motion of defendant to dissolve the injunction granted herein on the face of the bill.

Defendant comes, by her solicitors, and moves the court on the face of the bill to dissolve the injunction herein, and as grounds for said motion shows:

First. If it be true, as alleged in the bill, that the non-payment of the premiums which have been garnished entitled the com-
12 plainant to forfeit the policies on which said premiums are payable, then complainant is in nowise injured or affected by said garnishments.

The fact that said garnishments may endanger the rights of policy-holders is a matter with which complainant has no legal concern.

Second. The question as to whether or not the policies upon which the judgment in defendant's favor *were* rendered were obtained upon false and fraudulent representations cannot be raised in this proceeding. If the judgment is void as alleged, that is an end of the matter. If, on the other hand, it is valid, the question as to how the policies were obtained is forever closed.

Third. It appears from the face of the bill itself that the judgment rendered in favor of the defendant is valid and binding. The bill makes the record from the circuit court of Shelby county, Tennessee, in which said judgment was rendered a part thereof. It appears from that record that the policies of insurance sued on therein were issued in Shelby county, Tenn., at the solicitation of complainant, through one of its agents who was present in Shelby county at the

time. It further appears from said record that all the facts necessary to give the circuit court jurisdiction of said case, under the act of the legislature of Tennessee entitled "An act to subject foreign corporations to sue in this State," approved March 29th, 1897, existed. Said act is constitutional and valid. The alleged misnomer of complainant's agent, Chaffe or Chaffer, upon which service was had is immaterial. The bill admits that complainant did have a special agent in this county named Chaffee upon whom service was had, or at least it does not deny that service was had on him. Defendant therefore submits that said judgment is perfectly valid and binding, but as matter of fact it appears from the circuit court record that the service then was made on said agent'- true name, O. N. Chaffee.

Fourth. It is immaterial now as to whether the original demand of defendant was just or unjust. The only question is as to the
13 validity of the judgment. If the judgment is valid, then all other questions are concluded. The defendant therefore moves the court to dissolve the injunction granted herein and to allow her to proceed in the collection of her judgment.

TURLEY & WRIGHT,
For Mrs. Linda Y. Spratley.

Order Overruling Motion to Dissolve.

Executed January 4th, 1897.

CONNECTICUT MUTUAL LIFE INSURANCE CO.
vs.
LINDA Y. SPRATLEY. } No. 10365, R. D.

This cause was this day heard upon the motion of the defendant to dissolve the preliminary injunction heretofore issued, and the motion, having been argued by counsel and fully considered by court, is overruled and the defendant required to plead or answer within 20 days.

Answer of Linda Y. Spratley.

Filed 15th day of February, 1897.

Chancery Court of Shelby County, Tennessee, Part —.

CONNECTICUT MUTUAL LIFE INSURANCE CO.
vs.
LINDA Y. SPRATLEY. } No. 10365.

Answer of the defendant, Linda Y. Spratley, to the bill filed against her herein.

This respondent, saving and reserving all proper exceptions to the manifold errors contained in said bill, for answer thereto or to so much thereof as she is advised it is material for her to answer, says:

She admits that complainant is a corporation chartered and organized under the laws of the State of Connecticut, and that
14 its situs and chief office has been since its organization in Hartford, in the State of Connecticut.

She admits that she is a resident of Shelby county, Tennessee. She admits that at the May term, 1896, and on July 2nd, 1896, one of the days of said terms, she recovered a judgment against the complainant in the first circuit court of Shelby county, Tennessee, for the sum of eight thousand one hundred dollars and costs of suit on two policies of insurance issued by complainant on the life of Benjamin R. Spratley and payable to her.

She does not admit that the copy of said judgment filed as Exhibit No. 1 to said bill is correct. She will cause to be filed herein a certified copy of the record in said cause in which said judgment was rendered, and asks that the same may be made a part of this record.

She admits that she caused execution to be issued on said judgment to the sheriff of Shelby county, Tenn., and she admits that she instructed said sheriff to serve said execution by garnisheeing various policy-holders in complainant's company to answer what was their indebtedness to said company. She did this because she could not find any other class or kind of property belonging to complainant in the State of Tennessee. She denies that by this means she is disturbing and harrassing the policy-holders of complainant and endangering their rights under their policies.

She denies that the premiums due by the parties garnisheed are not payable in Tennessee. On the contrary, she avers that said policy-holders who have thus been garnisheed have constantly from the time their policies were issued to them down to a short time before she began her suit in the circuit court against complainant paid their said premiums to and received receipts for same from an agent or depository of complainant in the State of Tennessee.

She denies that said premiums so garnisheed are payable legally at the home office in Hartford, Conn. She denies that for
15 some years past such premiums have been paid te the agent at Louisville, Ky. On the contrary, she avers that up to a short time before she began her suit in the circuit court against complainant its practice was to send the receipts for the premiums due from the various policy-holders mentioned in the bill as having been garnisheed under the execution sued out on said judgment in the circuit court to the Union & Planters' Bank of Memphis, Tenn., or to some other bank in Memphis, Tenn. Said premiums were then paid into said bank as the depository or agent of complainant, and the premium receipts delivered by said bank to said policy-holders. After the death of said Benjamin R. Spratley, the husband of respondant, the complainant denied liability upon the two policies of insurance which it issued upon his life, payable to respondant. It was only after denying its liability on these policies that complainant ceased to send said premium receipts to said Union & Planters' bank or to some other bank in the city of Memphis, and

insisted that the premiums be paid in Louisville, Ky., or Hartford, Conn.

Respondent avers that this cau-se was taken with the express purpose of attempting to defeat the jurisdiction of the court- of Tenn. over complainant, and for the purpose of preventing respondent, if possible, from suing complainant on said policies in the courts of Tennessee. It was also done for the further purpose of preventing, if possible, or at least hindering and delaying respondent in the collection of any judgment which she might obtain in the courts of Tennessee on said policies.

Respondent has never seen the policies held by the various policy-holders garnisheed under the execution issued on her said judgment, and cannot, therefore, speak as to the contents of said policies; but she denies that the payment of premiums due complainant on said policies under the aforesaid garnishees could or would subject said policy-holders to any forfeiture of their said policies.

16 She denies that there is nothing due her on said judgment. On the contrary, she avers that the full amount of said judgment, with interest thereon, is due her, and she denies that the enforcement thereof through the garnishment proceedings referred to in the bill or in any other way is or will be -equitable or unjust.

She denies that said judgment is void. She denies that it was rendered without legal service of process against complainant. She denies that it was *coram non judice*.

She admits that complainant was a non-resident of the State of Tennessee at the time her said suit was brought and at the time said judgment was rendered.

She admits that when said suit was brought complainant had no regular office or legal agency in Shelby county or in the State of Tennessee, and that it had no such office or legal agency in Tennessee for some years preceding the institution of her said suit.

She denies that complainant has done no business in Tenn. for several years preceding the institution of said suit. On the contrary, she avers that complainant has been constantly doing business in the said State. She denies that said circuit court of Shelby county was without jurisdiction to entertain said suit and to render said judgment.

She denies that the recitals in said judgment "that complainant was doing business in Shelby county" is untrue. On the contrary, she avers that said recital was true, and she avers that complainant was at the time of the institution of her said suit and when said judgment was rendered and is now doing business in Shelby county, of the State of Tennessee.

She further avers that complainant at the time said suit was instituted and at the time said judgment was rendered and at the present time is doing business in the State of Tennessee and Shelby county without having complied with the laws of Tennessee regulating the manner in which foreign insurance companies are allowed to do business in this State.

17 She denies that the summons in her said suit purports to have been served "on O. N. Chafer, special agent" of complainant, "he being the highest officer or agent of said company to be found in my county." On the contrary, the return of the sheriff who served said summons is as follows: "Came to hand April 15th, 1896, and executed same day on the Connecticut Mutual Life Ins. Co. of Hartford, Conn., by reading the contents of this writ to O. N. Chaffee, special agent, he being the highest officer or agent of said company to be found in my county, whom I am informed was in my county on business connected with the subject-matter of this suit. This May 4th, 1896. J. J. Carver, sheriff of Shelby county, Tennessee, by Hugh B. White, deputy sheriff." It may be true that complainant never had any such agent, general or special, as O. N. Chaffer, but it certainly did have, as admitted in the bill, as special agent at the time said service was made named O. N. Chaffer, and the service was made on that person.

It is true that the said O. N. Chaffer was temporarily in the city of Memphis, county of Shelby and State of Tennessee, at the time said service was made on him, but it is also true that he was here, sent by complainant, for the special purpose of examining into and conferring with respondent or her agents with reference to the two policies of insurance upon which said judgment is based.

It is true that he had no special office or place of business in Memphis or in the State of Tennessee, but he was amenable to service of process in a suit brought against complainant growing out of transaction had in whole or in part within the State of Tennessee.

And now respondent shows that the two policies upon which said judgment is based *was* issued by complainant to her husband, Benjamin R. Spratley, in the State of Tennessee; were delivered to him in this State, and every premium which was paid on said policies was paid to complainant in this State. The entire transaction in which complainant issued said policies took place within the State of Tennessee.

18 And respondent now again avers that the said Chaffer was amenable to service in her said suit, and said service was perfectly valid and legal and served to bring complainant before the court in said suit.

Respondent is not informed as to the scope and extent of the express powers given to said agent, Chaffee, by complainant, but undoubtedly he was its agent and was in the State of Tennessee at the time said suit was brought, representing complainant and negotiating with reference to said policies upon which said judgment was based.

Respondent admits that her said suit in the circuit court was brought and pursued under the provisions of the act of the General Assembly of the State of Tennessee entitled "An act subjecting foreign corporations to suit in this State," approved March 29th, 1887, and found on page 366, etc., of the Acts of 1887.

She shows further that all the requirements of said act were complied with in her said suit, as will appear from an inspection of the certified record thereof, which will be filed herein. She de-

nies that said act is unconstitutional and void. She denies that proceedings taken in conformity therewith are void and of no legal effect. She denies again that said act is unconstitutional, and that the service of process had upon complainant's agent thereunder is -constitutional and of no effect. She denies that said statute and procedur*d* thereunder are not "due process of law," and she denies that said statute violates article 5 of the amendments of the Constitution of the United States, or that it violates the 14th amendment of the Constitution of the United States, or that it violates any other provision of the Constitution of the United States. She also denies that the said statute and the proceedings had thereunder violate sec. 17, art. 1, of the constitution of the State of Tennessee, or that it violates any other provision of the constitution of the State of Tennessee. She admits that the complainant is a very large life insurance company, and she hopes it is solvent;
19 but she denies that it is at all times ready and willing to pay any judgment or demand against it. It is in this very proceeding attempting to defeat a perfectly just and legal judgment and demand which it ought to have long since paid. She supposes that the bill correctly sets forth the names of the various persons who were served with garnishments in her suit in the circuit court. If it does not do so, then the certified transcript of the record of said case will give said named correctly. She does not know the amount of the annual premiums due from said garnishees to complainant. She supposes the amount set forth in the bill is correct, but if necessary the true amount can be shown.

And now, having answered so much of the bill as she is advised she ought to answer, she demurs to that part of the bill which alleges that the policies upon which her said judgment is based were procured by misrepresentations, &c., and, for ground of demurrer, shows that the only question which can be enquired into under the bill is as to the validity of her said judgment. No other question can be looked to. She asks that the injunction granted herein may be dissolved and the bill dismissed.

TURLEY & WRIGHT,
For Mrs. L. Y. Spratley.

Deposition of John M. Taylor.

Filed March 16th, 1897.

Chancery Court of Shelby County, Tennessee.

Caption.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
LINDA Y. SPRATLEY.

20 Deposition of John M. Taylor, witness for complainant in the above cause, taken before me upon the attached direct and cross interrogatories on the 8th day of March, 1897, at Hartford, Connecticut.

The said witness, JOHN M. TAYLOR, aged 52, being duly sworn, deposed as follows:

1st interrogatory by complainant. Where do you reside, what is your age, what official relation, if any, do you sustain to the Connecticut Mutual Life Insurance Company, and how long has that relation sustained?

Answer to 1st direct interrogatory. Hartford, Connecticut; 52 years; assistant secretary, October 1, 1872, to March, 1878; secretary, March, 1878, to March, 1884; vice-president since that date.

2nd intr. by same. State whether said Connecticut Mutual Life Insurance Company ever did business within the State of Tennessee with agents and officers in said State. If you answer "yea," please state when it began to do business in the State, at what point it had offices, and how long it continued to do business in the State.

Answer to 2nd direct interrogatory. The company transacted business in the State of Tennessee from February 1st, 1870, to July 1st, 1894. Its only agency was located at Memphis, in that State, where its agent had his office.

3rd intr. by same. At what date did the company withdraw its agents from that State and for what reason?

Answer to 3rd direct intr. The company withdrew from the State July 1, 1894, and terminated its agency because of the excessive mortality of its members insured in the State of Tennessee and of the excessive rates of taxation imposed by the State on its business there.

4th inter. by same. After the withdrawal of the agents
21 from the State of Tennessee was any business done in the way of taking risks in the State by the company through its agent at Louisville, Ky.? And, if yea, state whether this business was limited or large and state the reason for doing this business.

Answer to 4th direct intr. After its withdrawal from the State no risks whatsoever were written by the company through its agent at Louisville, Kentucky, in the State of Tennessee.

5th inter. by same. At what date did the company withdraw all agents and business from the State of Tennessee, and about what is the date of the last policy issued by it on any life in Tennessee?

Answer to 5th direct inter. July 1st, 1894. The last policy issued by the company on any life in Tennessee was dated —— 7, 1893.

6th inter. by same. Within the last few years prior to the withdrawal of all business from Tennessee where were the premiums of all policy-holders payable according to the contracts of the policiec? And, if you can do so, file as Exhibit No. 1 to your deposition a blank copy showing the terms of such contracts.

Ans. to 6th direct inter. All premiums were payable, by the terms of the company's applications and policies, which together constitute its contracts, at the company's office, in Hartford, Connecticut. I annex hereto and make part of this deposition the company's application and policy blanks, marked Exhibit "A" and Exhibit "B."

7th inter. by same. Why did the company, after withdrawal of its agents from Tennessee, permit for a while payment of premiums in the Union & Planters' Bank of Memphis?

Ans. 7th to direct inter. The company, after its withdrawal, did not permit payment of premiums at the Union & Planters' Bank of Memphis. It sent no collections to that institution and had
22 no relations with it. When the company withdrew from the State and notified its agent, James S. Carpenter, of its action he had sent to this bank as his correspondent and at his own risk some renewals on Tennessee lives for collection, the last one being sent August 14, 1894, and this business was transacted under the company's license from the State, which did not expire until January 1, 1895.

8th inter. by same. When and for what reason did the company finally disallow payments through this bank? State whether this Spratley demand or anything connected with it had anything to do with the disallowance of payments of premiums through that bank at Memphis.

Ans. to 8th direct inter. The company disallowed all payments through this bank or elsewhere in Tennessee to its agent, Carpenter, to make sure that its withdrawal was complete and unquestionable in all respects. Its action had no relation to the claim or demand involved in the present suit, which did not occur and was not presented until more than a year and a half after the company's withdrawal, July 1, 1894.

9th inter. by same. When the Connecticut Mutual Life Insurance Company began its business in Tennessee and during the continuance of such business, please state whether or not it complied with the statutory requirements of the State and whether it paid the license fees or other taxes imposed upon it by the laws of Tennessee for doing such business.

Ans. to 9th direct inter. From its entry in the State to transact business, in 1870, to its withdrawal, in 1894, the company complied with every statutory requirement and paid all licenses, fees, and taxes imposed by the State for doing business in it.

10 inter. by same. Up to what time did the company continue to pay these fees and taxes and why did it cease?

23 Ans. to 10 direct inter. To July 1, 1894. It ceased to pay them and withdrew because of the excessive taxes imposed by the State as a condition of doing business there.

11th inter. by same. Please state whether or not the company complied with the requirements of the act of Tennessee of 1875 by filing in legal form "with the insurance commissioner a power of attorney authorizing the secretary of the State to acknowledge service of process for and on behalf of such company at any and all times after the company had once complied with the laws of Tennessee and been regularly admitted, even though the company might subsequently retire from the State or be excluded."

Ans. to 11th direct inter. It did so comply in all respects and filed with the authorities the required power of attorney, and I annex herewith as a part of this deposition a copy of the same, marked Exhibit "C."

12th inter. by same. Please state whether or not after filing this power of attorney and complying with other legal requirements the company was regularly admitted to do business in the State of Tennessee and whether it continued to do business in the State, as you have already stated, without objection on the part of the State authorities.

Ans. to 12th direct inter. The company was regularly admitted on compliance with the laws of the State in 1870 and continued to do business in Tennessee without objection by the State authorities to the time of its withdrawal.

13th inter. by same. Please state whether this power of attorney was ever withdrawn or revoked in any manner.

Ans. to 13th direct inter. The power of attorney mentioned in my answer to direct interrogatory 11th has never been withdrawn or revoked.

24 14th inter. by same. Please state with care and accuracy what relation, if any, one O. N. Chaffee sustained to the Connecticut Mutual Life Insurance Company in April and May, 1896.

Ans. to 14th direct. inter. O. N. Chaffee was employed by this company June 7, 1887, and is still employed by it for a special purpose and no other, to wit, to investigate doubtful or questionable death claims and report the facts to the company for its action. He had no authority, duty, or service other than to act under the company's special instructions, as an employee, in the investigation and adjustment of this class of claims. In April and May, 1896, he was performing these special duties, and no other. He had no authority to bind the company by a settlement of any claim or make any proposition or any binding contract for it, unless specially empowered by the company after receiving and considering the report he was employed to make. He had no other authority in the Spratley case.

15th inter. by same. Please state whether he was the agent or the mere employé of the company, and if you have the written evidence

of his employment please file a true copy of such power as Exhibit No. 2 to your deposition.

Ans. to 15th direct inter. He was and is the employee of the company for the special purpose mentioned in my last answer, and was not and is not an agent of the company. The company has his letter of appointment, and I annex a copy herewith as a part of my deposition, marked Exhibit "D."

16th inter. by same. State whether or not since his first employment to May, 1896, there has been any change or enlargement of his authority, and whether in May, 1896, he represented the company in any manner different from that stated in your Exhibit No. 2.

Ans. to 16th direct inter. There has been no change or
25 enlargement of his authority or duties since his appointment, and in May, 1896, he represented the company in no different respect than as stated in his appointment.

17th inter. by same. State whether or not Mr. Chaffee was in May, 1896, or before or since the representative of the company to acknowledge or accept service for it of legal process or to be served with legal process.

Ans. to 17th direct inter. Mr. Chaffee has never been this company's representative to acknowledge or accept for it service of legal process or to be served with legal process.

Cross-examination of JOHN M. TAYLOR:

Defendant, Linda Y. Spratley, excepts to the 7th interrogatory-in-chief above. It is immaterial what the reason was that induced the plaintiff to permit the payments of premiums to be made to the Union & Planters' Bank of Memphis. Saving this exception, she proceeds to cross-examine as follows:

Int. 1. Pleas- state if for many years J. S. Carpenter or the firm of J. S. Carpenter & Co. were not the agents of the Connecticut Mutual Life Insurance Company in Tennessee, with an office and headquarters in Memphis, Tenn.

Ans. to 1st cross-inter. J. S. Carpenter & Co. were this company's agents in Tennessee, with an office in Memphis, from February 1st, 1870, to December 1st, 1876.

2 Int. State when J. S. Carpenter or the firm of J. S. Carpenter & Co. moved his or their office from Memphis, Tenn., and state to what point the office was moved.

Ans. to 2nd cross-inter. J. S. Carpenter moved his office from Memphis, Tenn., to Louisville, Kentucky, Dec. 1, 1878.

26 3rd inter. State exactly how long J. S. Carpenter or J. S. Carpertet & Co. had an office in Memphis, Tenn., as agents of the Connecticut Mutual Life Insurance Co., and state within what territory J. S. Carpenter or J. S. Carpenter & Co. represented said company while he or they had an office in Memphis, Tenn.

Ans. to 3rd cross-inter. J. S. Carpenter & Co. had an office in Memphis, Tennessee, from Feb. 1, 1870, to Dec. 1, 1878. Their territory was the State of Tennessee.

4 inter. State exactly when it was that the Connecticut Mutual Life Insurance Co. last had its last agent in Tennessee who kept an office in that State, and state who this agent was and where said office was kept, and state when said agent was withdrawn from Tennessee.

Ans. to 4th cross-inter. Dec. 1, 1878, this company had its last agent in Tennessee who kept an office in Tennessee. They were J. S. Carpenter & Co. Their office was in Memphis, Tennessee, Dec. 1, 1878. The company appointed James S. Carpenter its sole agent for Kentucky and Tennessee, and he then established his agency and office at Louisville, Kentucky, and discontinued his Memphis office. His agency for Tennessee was cancelled, and the company withdrew from the State July 1, 1894.

5th inter. State the date of the last policy issued by the Connecticut Mutual Life Insurance Co. to a citizen or resident of Tennessee. Give the exact date and state when and how said policy was issued and to whom it was issued.

Ans. to 5th cross-inter. August 7, 1893. The policy was issued at the company's home office in usual course and sent to its agent, James S. Carpenter, at Louisville, Kentucky, for collection of the premium. It was issued to Geo. E. Spencer, of Harriman, Tenn.

6th. State fully everything which has been done by the Connecticut Mutual Life Insurance Co. with reference to complying with the laws of Tennessee regulating the manner in which foreign life insurance companies shall or may do business in said
27 State. Answer this fully, giving every step and everything done by the Connecticut Mutual Life Insurance Co. under said laws.

Ans. to 6th cross-inter. I am unable to state everything that has been done by this company in so long a period, 1870 to 1894, to comply with the laws of Tennessee regulating the manner in which foreign life insurance companies may do business there, but do state that while in the State the company filed its power of attorney, paid its taxes and fees, and complied with the laws and every requirement of the State officials to their satisfaction and without objection until the company's withdrawal, as may also be noticed by the files, records, and correspondence of the insurance department at Nashville.

7th. Is it not a fact that the Connecticut Mutual Life Insurance Company has had a controversy with the insurance commissioner of Tennessee or with some officer representing the insurance department over its liability for license, taxes, or other taxes, and is it not a fact that in this controversy the Connecticut Mutual Life Insurance Co. claimed that it was not doing business in Tennessee, and is it not a fact that in the course of this controversy considerable correspondence passed between the Connecticut Mutual Life Ins. Co. and said insurance commissioner of Tennessee or other officer representing the insurance department of Tennessee? If you say there was such a controversy and that correspondence ensued in consequence thereof between the Connecticut Mutual Life Insurance Company and the insurance department of Tennessee or any official of Tennessee,

please produce and file copies of their correspondence as part of your deposition.

Ans. to 7th cross-inter. This company has had no controversy with the insurance commissioner or with any other officer of the insurance department or representing it as to taxes or license taxes.

After its withdrawal from the State it ceased to be liable
28 to pay taxes imposed by the State for doing business therein.

The company stated its views and denied any liability on this account in a correspondence with E. B. Craig, the insurance commissioner of the State, and no taxes have been collected, demanded, or paid since the correspondence closed. I annex hereto and make part of my deposition copies of the correspondence with the insurance commissioner, marked Exhibits E, F, G, H, and K.

8. Please state if the Connecticut Mutual Life Insurance Co. has not formerly notified the proper officers of the State of Tenn. that it has withdrawn from doing business in said State, and if it has given such notification give the date thereof and copy of same, making said copy part of your deposition.

Ans. to 8th cross-inter. The company formerly notified the proper official of the State of Tennessee of its withdrawal from doing business in the State in a letter to Ho-. E. B. Craig, insurance commissioner, July 21, 1894. I have annexed hereto a copy of said letter, marked Exhibit E in my answer to the last cross-interrogatory, and make it a part of this deposition.

9. Is it not a fact that since the company has given the above notification, showing its withdrawal from the State of Tennessee, that citizens and residents of Tennessee have applied either to the home office of the company or have applied to some agent of the company in another State for policies, and that upon such applications policies have been issued by the company to citizens and residents of Tennessee?

Ans. to 9th cross-inter. It is not a fact that the company has written such risks upon citizens of Tennessee, to my knowledge. It has refused to receive such applications or to write upon them.

10. If you produce a blank policy as Exhibit No. 1 to your deposition, then state if from time to time the form of policies in your company has not been changed.

Ans. to 10th cross-inter. The forms of policies have been changed from time to time, but the notice and requirement of paying
29 premiums at the home office of the company have been in our contracts for more than twenty-five years.

11. Please state how many policies of the company are outstanding in Shelby county, Tenn., and during what periods said policiesholders were allowed to pay their premiums to the Union and Planters' Bank of Memphis or some other bank in Shelby county, Tenn., and state the date when the company ceased to send the premium receipts for policies outstanding in Shelby county, Tenn., to the Union & Planters' bank or any other bank in Shelby county, Tenn.

Ans. to 11th cross-inter. We have no means of knowing how many of the company's policies are outstanding in Shelby county,

Tenn., as our registers are not kept by counties, and there is no separate classification of this kind. We know nothing of James S. Carpenter's relation with the Union & Planters' Bank of Memphis or with any other bank in Shelby county as to the collection of premiums. The company never sent any premiums receipts on policies outstanding in Shelby county, Tennessee, or elsewhere to this bank or in any other bank in Shelby county for collection.

12. Please state how long Mr. O. N. Chaffee has been employed by the Connecticut Mutual Life Insurance Company and in what capacity he has been employed by it. Answer this question in full.

Ans. to 12th cross inter. Mr. Chaffee has been employee of this company since June 7, 1887, in the capacity and for the special purpose fully mentioned in my answers to direct interrogatives 14, 15, and 16 of this deposition.

13. Is it not a fact that Mr. O. N. Chaffee was sent by the Connecticut Mutual Life Insurance Company on or about May, 1896, on or between the date of Mr. Spratley's death and the commencement of the suit by Mrs. Spratley in the circuit court at Memphis, Tenn., to look into the claim being made by Mrs. Linda Y. Spratley on the policies issued to her husband?

30 Ans. to 13th cross-inter. Mr. Chaffee, in May, 1896, was sent to Memphis, Tenn., to investigate and report the facts affecting the claims presented by Linda Y. Spratley on two of this company's policies on the life of Benjamin R. Spratley. The investigation and Mr. Chaffee's report showed that Spratley died either by suicide or from an overdose of chloral or morphine following a spree and in violation of the condition of the policies, which caused the company's refusal to pay these claims.

14. After the Connecticut Mutual Life Insurance Company withdrew its agents and agencies from Tenn. is it not a fact that its agent or *or* agents at Louisville, Ky., or at other places outside of Tenn., come into Tenn., issued and solicited business, and took applications for policies in Tenn.? State to what intent this was done and how many policies were issued in this way by said Co. to citizens of Tenn.

Ans. to 14th cross-inter. After this company's withdrawal from Tennessee this company has no knowledge that its agent at Louisville, Ky., or at any other place outside of Tennessee, came into that State to solicit or take applications for policies in Tennessee. We have no reason to believe that such action was taken, and no such business was written.

(Signed) JOHN M. TAYLOR.

Certificate.

The foregoing deposition was taken before me, as stated in the caption, and reduced to writing by me, and I certify that I am not interested in the case nor of kin or counsel to either of the parties, and that I sealed it up and put it in the post-office, without being

out of my possession or altered after it was taken, addressed to R. H. Beard, clerk and master of the chancery court, Memphis, Tenn.

Given under my hand the 13th day of March, 1897.

CHARS. E. THOMPSON,
Notary Public.

31 HARTFORD, CONNECTICUT.

And I hereby certify that my commission is dated February 1, 1896, and will expire February 1, 1898.

(Map here.)

"C."

EXHIBIT TO TAYLOR'S DEPOSITION.

Insurance companies.

(Not organized in Tennessee.)

Know all men by these presents: That the Connecticut Mutual Life Insurance Company, a corporation created by and organized under the laws of the State of Connecticut, and thereby authorized to transact the business of life assurance, desiring to transact such business within the State of Tennessee, pursuant to the laws thereof, does, by these presents, authorize the secretary of state in *in* and for said State of Tennessee, to acknowledge service of all legal process, whether mense or final for and in behalf of it, and the said corporation above named, in said State of Tennessee, in any judicial proceeding which may, within the said State of Tennessee, be instituted against it the said company, or to which it may be a party; and the said company does hereby, in consideration of the privilege of doing business in said State aforesaid, consent to and with said State of Tennessee for the benefit of all persons concerned, that service of any such process upon such secretary of state shall be taken and held to be valid as if served upon it, the said company above named, according to the laws of said State of Tennessee, or of any other State, and the said company does hereby further consent that in case it, the said company above named, shall
32 cease to transact business in the said State of Tennessee, said secretary of state shall be considered and held as continuing to be attorney for it, the said company, for the purpose of process as aforesaid, in any action against it, the said company above named, upon any policy or liability issued or contracted during the time the said company transacted business in the said State of Tennessee.

In witness whereof, the said company, in accordance with a resolution of its board of directors, duly adopted by said board on the 17th day of March A. D. 1876, (a certified copy whereof is hereunto attached), hath — these presents affixed its corporate seal, and caused the same to be subscribed and attested by its president and secretary,

at the city of Hartford in the State of Connecticut on the 17th day of March A. D. 1876.

JAMES GOODCOM, *President.*

Attest: JACOB S. GREEN, *Secretary.*

Certified Copy of a Resolution Duly Adopted by the Board of Directors of the Connecticut Mutual Life Insurance Company (of and Incorporated under the Laws of Connecticut) on the 7 Day of March, A. D. 1876.

I, Jacob S. Green, undersigned, secretary of the Connecticut Mutual Life Insurance Company of Hartford, Conn., do hereby certify that the following is a true and correct copy from the corporate records of the said company of a resolution duly adopted by the board of directors thereof at a regular meeting of said board, a quorum thereof present and acting, on the 17 day of March, 1876—that is to say:

Resolved, That the president and secretary of this company are hereby authorized to execute, under the corporate seal of the company, a power of attorney, in accordance with the insurance laws of the State of Tennessee, to the secretary of state.

Given and certified at the principal office of said company, in the city of Hartford, State of Connecticut, and the common seal thereof hereto affixed by the undersigned, having custody of the
33 same as secretary of said company, this 17 day of March, 1876.

JOHN L. GREEN, *Secretary.*

I, E. B. Craig, insurance commissioner, do hereby certify that the foregoing is a true and correct copy of the power of attorney now on file in my office constituting and appointing the secretary of state attorney for service of process for the Connecticut Mutual Life Insurance Company.

In witness whereof I have hereunto set my hand and caused the seal of my office to be affixed this 20th day of February, 1897.

E. B. CRAIG,
Ins. Commissioner.

EXHIBIT "D" TO TAYLOR'S DEP'N.

HARTFORD, *June* 7, 1887.

O. N. Chaffee, Esq., Grafton, Illinois.

DEAR SIR: Referring to President Green's recent interview with you, we have to make the following proposition:

This company to employ you, for special service in any matters which may be referred to you with instructions during the pleasure of the directors of the company and under the direction of the executive officers; to have your entire time and services, except upon leave of absence; to pay the necessary traveling and hotel expenses incurred in the line of your duty, and to pay you for your time and

services at the rate of twenty-five hundred dollars ($2,500) per annum; this agreement terminable on the part of the company at the pleasure of directors and on your part by thirty days' written notice.

Please signify your acceptance of this proposition if it meets your views. If accepted this will take effect July 1st next.

Respectfully yours, W. G. ABBOTT, *Secretary.*

34 EXHIBIT "E." J. M. T.

Copy.

HARTFORD, *July* 21, 1894.

Hon. E. B. Craig, insurance commissioner, Nashville, Tennessee (through Mr. James S. Carpenter).

DEAR SIR: I have the honor to hand you herewith New York exchange to your order in the sum of $568.95, in full settlement and payment of the taxes due to the State of Tennessee under its present statutes, and *the* following the advise of your general letter of July 1st instant, together with the return certified by myself as an officer of the company. Kindly note that this company, as of the first day of July instant, ceased to do business in the State of Tennessee and it has and will have no agents or representatives therein, and its withdrewal from the State will in no way, we understand, be liable for taxes, fines, or fees under the statutes relating to the transaction of business by the life-insurance companies of other States.

Respectfully yours, JOHN M. TAYLOR, *Vice-P.*

Copy.

EXHIBIT "F." J. M. T.

NASHVILLE, *May* 10, 1895.

Connecticut Mutual Life Insurance Co., Hartford, Conn.

DEAR SIR: I had a correspondence with you on or about the date of your last payment of taxes to this State, namely, July
35 1st, 1894, in reference to your liability for taxes on your premiums received from policy-holders in this State as renewal premiums. At the time you were informed that it was our construction of the law that the fact that you had ceased the transaction of business only to the extent of ceasing to solicit new business would not relieve you from the payment of the $2\frac{1}{2}$ — tax on premiums received on policies already in force in this State. On January 1st last the usual blank for remitting tax due was forwarded to you, but you have failed to respond. We have obtained an official opinion from the attorney general of the State confirming our construction of the tax law, and unless you make payment at once we will be compelled to proceed to collect the tax by action at law, and should we be forced to this action will endeavor to collect the penalty accrued.

I inclose you blank for return and payment of tax on premiums

received from July 1st, 1894, to January 1st, 1895, and sincerely hope you will make the required payment promptly and thus save us the necessity of taking the steps indicated above.

Yours very truly, E. B. CRAIG, *Ins. Com.*

Copy.

EXHIBIT "G." *L.* M. T.

MAY 17, 1895.

Hon. E. B. Craig, insurance commissioner, Nashville, Tenn.

DEAR SIR: We have your favor of May 10th instant, in which we note your present opinion and that of the attorney general of your State, that this company is liable for a tax upon premiums
36 on policies on the lives of citizens of Tennessee, following previous correspondence in this behalf.

We are as clear now as on the former occasion, when we advised you of our views, that the company is in no proper sense or under any proper construction of your law liable for that tax, *and* substantial reasons that it seems idle to discuss in the presence of your demand and the probability of the litigation which you propose to inaugurate. We will thank you, however, to pay us the courtesy of a sufficient delay to refer the questions at issue to counsel in your State, in which opinion we have every reason to repose great confidence, and upon receipt of that opinion you will be immediately advised of the company's action in the premises.

We reciprocate the regret you express for any necessity that you may feel to institute legal proceedings, but we have, on the other hand, as we now view the situation, a duty imposed upon us in the protection of our members' interest, which admit of no question.

Trusting that it will be agreeable to you to withhold action pending the receipt of the opinion mentioned, and that you may duly advise us of your consent to delay for this sole purpose, I am,

Respectfully yours, JOHN M. TAYLOR,
Vice-President.

Copy.

EXHIBIT "H." J. M. T.

Department of insurance, State of Tennessee—E. B. Craig, commissioner.

NASHVILLE, *May 20th*, 1895.

Conn. Mutual Life Ins. Co., Hartford, Conn.

37 DEAR SIR: I am in receipt of your favor of the 17th instant and note request contained therein.

We have no objection to allowing you a reasonable time in which to confer with your attorney in this State relative — your liability to the payment of the tax demanded by this department, and will defer any action for the present, awaiting further advice from you.

Yours very truly, E. B. CRAIG, *Ins. Com.*
WELLS.

Copy.

EXHIBIT "K." J. M. T.

MAY 27, 1895.

Hon. E. B. Craig, insurance commissioner, Nashville, Tennessee.

DEAR SIR: With thanks for your courtesy following recent correspondence as to taxes under your laws, I beg to say that we have referred the matter to counsel in your State, in whose opinion we have entire confidence, and the company will not pay the tax, because it is not liable for it, following his advice. The opinion is rendered by Hon. B. M. Estes, of Memphis, upon a complete understanding of all the facts and circumstances of the company's withdrawal from the State of Tennessee.

Respectfully yours, JOHN M. TAYLOR,
Vice-President.

Deposition of O. N. Chaffee.

Filed March 18, 1897.

38 In the Chancery Court of Shelby County, Tennessee, Part One.

Caption.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* LINDA Y. SPRATLEY. } Chancery Court of Shelby County, Tenn.

Deposition of O. N. Chaffee, witness for complainant in the above cause, taken before me upon the attached direct and cross interrogations, on the 15th day of March, 1897, at Hartford, Connecticut.

1st ques. by complainant. State your age, place of residence, and employment.

Ans. to 1st direct interrogatory. Detroit, Michigan; 61 years. I am in the employment of the Connecticut Mutual Life Insurance Company in the manner stated in my answer to the 2nd direct interrogatory.

2nd ques. by com. In what business were you employed in March and April, 1896? If you say you were employed by the Connecticut Mutual Life Insurance Company, please state carefully and accurately the terms of your employment.

Ans. to 2nd direct inter. In March and April, 1896, I was employed in the service of the Connecuticut Mutual Life Insurance Company, and the terms of my employment are contained in the letter of the company employing me, a copy of which is appended, marked Exhibit "A," and made a part of this deposition.

3rd ques. by com. If you were in Memphis, Tennessee, in April, 1896, state why you were there and what power or authority you

had from the Connecticut Mutual Life Insurance Company to bind it in any manner.

Ans. to 3rd direct inter. I was in Memphis, Tennessee, in March and April, 1896, by order of the company contained in a
39 letter dated March 20th, a copy of which is appended, marked Exhibit "B," and made a part of this deposition. I had no authority or power from the company to bind it in any manner.

4th ques. by complainant. State whether or not at that time you were empowered by the company to bind it by any settlement of Mrs. Spratley's claim.

Ans. to 4th direct inter. I had no authority to bind the Connecticut Mutual by any settlement of Mr. Spratley's claim.

5th quest. by com. State carefully and circumstantially the facts pertaining to your visit to Memphis at that time and whether you represented to any one or to S. J. York that you had authority to bind the company by settlement or otherwise of the Spratley claim.

(Defendant excepts to the 4th question as submitted to O. N. Chaffee because it calls for his opinion as to the extent of his authority, and for the same reason defendant excepts to any answer which may be given to said question. Reserving this exception, defendant cross-examines as follows:)

Ans. to 5th direct inter. While in Memphis at that time I enquired of several persons as to the habits and the circumstances of the death of Benjamin R. Spratley, and made a report to the company of the facts ascertained. I had no authority to bind the company by settlement or otherwise of the Spratley claim, and did not represent to S. J. York or any one else that I had such authority. On the contrary, I distinctly stated to S. J. York that I had no such authority.

Cross-examination as follows:

1. Is it not a fact that you were sent to Memphis in April, 1896, or about that time, by the complainant, The Connecticut Mutual Life Insurance Company, to examine into the claim made by defendant, Mrs. Linda Y. Spratley, upon the two policies issued by said company upon the life of her husband, Benj. R. Spratley?
40 Is it not further a fact that you came to Memphis for complainant company on this business; that when you reached Memphis you had an interview with Mrs. Linda Y. Spratley and afterwards had interviews with her brother, Mr. S. J. York? If you say you came to Memphis on this business, then please state in detail everything you did in connection therewith while you were in Memphis.

Ans. to 1st cross-inter. I was sent to Memphis, Tenn., in March, 1896, by the Connecticut Mutual Life Insurance Company to ascertain and report the facts as to the habits of Benj. R. Spratley and the circumstances of his death, and while there had interviews with Mrs. Linda Y. Spratley, in which she stated that her husband, Benj. R. Spratley, had been in the habit of going on sprees frequently ever since the date of their marriage; that when on these sprees he

was in the habit of absenting himself from their home for several days at a time, and that on many of these occasions her brother, S. J. York, had gone about the city of Memphis searching for him; that her husband had been with her from 6.30 to 10.00 p. m. the day before his death, and was then in a drunken condition and insulted and illtreated her, and told her finally, in reply to her entreaties to stay there at her mother's residence, that he "didn't care a dam- what she wanted" and went away, and was found the next morning in a dying condition in a room which he had rented. I had an interview also with the mother of Mrs. Spratley, who fully confirmed the statement of her daughter as to the intemperate habits of Spratley, extending over many years; and I had an interview with S. J. York, who did not deny the statements which I made to him as to the habits of Spratley, as reported to me by his mother and sister. I also interviewed the people who discovered Spratley in a dying condition and the physicians who afterwards had him under their care till the time of his death. I made a report to the company of these statements and facts, showing that
41 Spratley had been grossly intemperate for many years before he applied for the policies, and died either by suicide or an overdose of morphine taken after a spree.

2nd Ques. Is is not a fact that while you were in Memphis looking into this claim on said two policies that you communicated with the officers of the complainant company, and is it not a fact that on the 13th of April, 1896, or about that date, you received a dispatch from Mr. John M. Taylor, vice-president of the complainant, addressed to you at the Gayoso hotel, in Memphis, Tenn., in which he said, "We think case should be settled for reserve or *or* thereabouts;" is it not a fact that this telegram referred to the claim upon the two policies issued upon the life of Benj. R. Spratley? Please produce and file the original- of said telegrams as part of your deposition.

Ans. to 2nd cross-inter. After I had made my report to the company I received a telegram, addressed to me, care of Gayoso hotel, Memphis, Tenn., in these words: "We think case should be settled for reserves or thereabouts." Signed, "John M. Taylor, vice-president." The original is not in my possession. In accordance therewith, I visited Mrs. Spratley and her brother, S. J. York, at her request and communicated the offer of the company. They thought the offer too small and declined it. I then said: "I have no authority to make any other proposition, but if you will name a figure on which you will settle I will write to the company and get instructions, and they can accept or decline, as they choose." Mrs. Spratley and her brother finally refused to make an offer.

O. N. CHAFFEE.

Certificate.

The foregoing deposition was taken before me, as stated in the caption, and reduced to writing by me, and I certify that I am not interested in the cause, nor kin or counsel to either of the
42 parties, and that I sealed it up and put it in the post-office, without being out of my possession or altered after it was

taken, addressed to R. H. Beard, clerk and master of chancery, Memphis, Tenn.; and I hereby certify that my commission as notary public is dated February 1, 1896, and will expire February 1, 1898.

CHAS. E. THOMPSON,
Notary Public, Hartford, Conn.

Copy.

EXHIBIT "A."

HARTFORD, *June* 7, 1887.

O. N. Chaffee, Esq., Grafton, Illinois.

DEAR SIR: Referring to President Green's recent interview with you we have to make the following proposition: This company to employ you for special service in any matters which may be referred to you, with instructions during the pleasure of the directors of the company and under the direction of the executive officers; to have your entire time and services, except upon leave of absence; to pay the necessary traveling and hotel expenses incurred in the line of your duty, and to pay you for your time and services at the rate of twenty-five hundred dollars ($2,500) per annum; this agreement terminable on the part of the company at the pleasure of the directors and on your part by thirty days' written notice.

Please signify your acceptance of this proposition if it meets your views. If accepted this will take effect July 1 next.

Respectfully yours, W. A. ABBOTT, *Secretary.*

Copy.

EXHIBIT "B."

43 HARTFORD, *March* 20, 1896.

Mr. O. N. Chaffee, 85 Edmond place, Detroit Mich.

DEAR SIR: Following our dispatch of yesterday, inclosed please find the papers in the following cases for investigation and report: #48491; Erasmus D. Peck, Toledo, Ohio; $4,500. Peck died of cirrhosis of the liver, and the physician says in his certificate that "he used stimulants daily," and probably with the "usual influence," and our medical director thinks it necessary that the company be advised as to the intemperance and its results.

#189,257 and #202,462; Benjamin R. Spratley, Memphis, Tennessee; $5,000 and $3,000. Spratley died of morphine poisoning in Memphis, February 28th, 1896, and the doctor says that "he got on a spree occasionally and died from an overdose of morphine;" and the facts invite your careful investigation.

Respectfully yours, JOHN M. TAYLOR, *Vice-Pres.*

Deposition of S. J. York.

Filed March 22nd, 1897.

Chancery Court of Shelby County, Tenn.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
LINDA Y. SPRATLEY.

The deposition of S. J. York, taken on behalf of the defendant, all exceptions save for irrelevancy and incompetency waived.

Int. 1. Where do you live, Mr. York?

A. I live in Memphis, Tenn.

2 Q. How long have you lived in Memphis, Tenn.?

A. About 20 years.

44 3. What business are you engaged in?

A. At present I am agent in Memphis, Tenn., for the Blue & Canada line.

4. What relation are you to the defendant, Mrs. Linda Y. Spratley?

A. I am her brother.

5. Who was the husband of defendant, Mrs. Linda Y. Spratley?

A. Benjamin R. Spratley.

6. When did he die?

A. On Feb. 28th, 1896.

7. I show you two policies issued by the complainant, The Connecticut Mutual Life Insurance Company, upon the life of Benj. R. Spratley, both payable to the defendant, Mrs. Linda Y. Spratley, one date- 12th of Dec., 1889, for the sum of $5,000.00, being No. 189,257, and the other dated Feb. 25th, 1893, for the sum of three thousand dollars, being No. 202,462. Please state if you remember when these policies were issued to Benj. R. Spratley, when the applications were taken, and under what circumstances issued.

A. I do remember when these policies were taken out. Mr. Jas. S. Carpenter, the agent for the complainant company, with headquarters in Louisville, Ky., came to Memphis and solicited Mr. Spratley to take the policies, and the application for these policies was taken by Mr. Carpenter from Mr. Spratley in Memphis, Tenn.

8. Do you know Mr. Jas. S. Carpenter; and, if so, how long have you known him?

A. Yes; I know him and have known him for many years. He solicited insurance from me at the same time. The last policy was issued to Mr. Spratley and — took my application here in Memphis for a policy which was afterwards granted.

9. Do you know Mr. O. N. Chaffee? If so, state all you know about him; what, if anything, you know about his connection with the complainant, The Connecticut Mutual Life Ins. Co., and whether he ever came to Memphis on behalf of said company in connection

with the two policies mentioned above issued by it on the
45 life of Benj. R. Spratley.

A. After Mr. Spratley's death and in April, 1896, the said Chaffee came to Memphis, Tenn. I had been absent during that month from Memphis on a trip and returned somewhere about the 13th of April, 1896. When I got back Mr. Chaffee called to see me and told me he represented the complainant, and that his business in Memphis was to settle or arrange the claim of Mrs. Spratley on the two policies mentioned above on her husband's life. He had been in Memphis several days and had seen Mrs. Spratley in the meantime and awaited my return. I had several interviews with him during which he offered to settle the matter by paying my sister the reserve value of the policies. He left with me either the original or copy of dispatch which he had received from Mr. John M. Taylor, vice-president of the complainant, stating that he (Taylor) thought the matter could be settled for the reserve value. I make this dispatch Exhibit "A" to my deposition. I can fix the date of his visit by this dispatch.

EXHIBIT "A."

Dispatch.

APRIL 13TH, 1896.

To O. N. Chaffee, Gayoso hotel, Mfs.:

We think case should be settled for reserved or thereabouts.

JOHN M. TAYLOR,
Vice-President.

10. You remember when your sister, Mrs. Spratley, brought the suit in the circuit court on these two policies?

A. I do. I went with her to see her attorneys when she gave instructions about bringing it.

11. Were you present when the writ was served on Mr. Chaffee in this suit?

A. I was present. It was served on him in my office, where he had called to see me about the settlement of said policies.

The complainant, by its solicitor, excepts to the competency of the following portion of the foregoing direct examination of witness J. S. York, viz:

46 1st. To answer to 7th direct interrogatory because the same is irrelevant to the issue involved in this suit.

2nd. To the answer to the 9th interrogatory because it is incompetent to prove Chaffee's agency by Chaffee's own declaration in April, 1896, or at any other time, and also incompetent to prove his statements or declarations to bind the complainant as it is attempted to do.

3rd. To the supposed and unproved telegram exhibited with the direct examination, because the same is not legally established as a telegram sent to the complainant.

For the present, cross-examination is waived, but the right to

cross-examine at any time before the hearing is reserved, as well as the right to rely upon the objections to competency, &c.

B. M. ESTES,
Sol. for Complainant.

March 6th, 1897.

S. J. YORK.

Subscribed and sworn to before me this March 6th, 1897.

W. M. FARRINGTON, JR.,
Notary Public.

Circuit Court Proceedings.

Summons issued 15th day of April, 1896.

Cost Bond.

LINDA Y. SPRATLEY
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN. } No. —.

I bind myself to the defendant in the sum of two hundred and fifty dollars for the successful prosecution of this action; to be void on condition that I pay all the costs which may at any time be adjudged against the plaintiff, Linda Y. Spratley, in the event that she shall not pay the same; otherwise to remain in full force.

47 Witness my hand this 15th day of April, 1896.

S. J. YORK. [SEAL.]

State of Tennessee to the sheriff of Shelby county, Greeting:

You are hereby commanded to summon the Connecticut Mutua Life Insurance Company of Hartford, Connecticut, if to be found within your county, personally to be and appear before the judge of the circuit court of Shelby county, at a term of said court to be held for said county at the court-house, in the city of Memphis, on the 3rd Monday in May next, then and there to answer Linda Y. Spratley in an action to her damage twelve thousand dollars.

Herein fail not, and have you then and there this writ.

Witness John A. Strehl, clerk of said court, at office, the third day of March, 1896.

JOHN A. STREHL, *Clerk.*
A. J. WILLIFORD,
Deputy Clerk.

Came to hand April 15th, 1896, and executed same day on the Connecticut Mutual Life Insurance Company of Hartford, Connecticut, by reading the contents of this writ to O. N. Chaffee, special agent, he being the highest officer or agent of said Co. to be found in county, whom, I am informed, was in my county on business connected with the subject-matter of this suit.

This May 4th, 1896.

A. J. McCARVER,
Sheriff of Shelby County, Tenn.,
By HUGH B. WHITE, *Dep. Sher'f.*

Certificate of Mailing Copy — Writ to Defendant Co.

Filed May 4th, 1896.

Registered letter No. 2378—P. O., Memphis, Tenn.—received —— 4th, 1896, of John A. Strehl; addressed to Connecticut
48 Mutual Life Ins. Co., Hartford, Conn.

Post-office at Memphis, Tenn.

Name of sender, John A. Strehl; reg. No. 2378; registered May 4th, 1896, Memphis, Tenn.; addressed to Connecticut Mutual Life Ins. Co., Hartford, Conn.

Received the above-described registered letter, (signed) Conn. Mutual Life.

WM. P. GREEN.

MEMPHIS, TENN., *May 4th*, 1896.

LINDA Y. SPRATLEY
vs. } 6526, A. D.
CONN. MUTUAL LIFE INS. CO. OF HARTFORD, CONN.

I hereby certify that I this day mailed to defendant Co., at Hartford, Conn., a true copy of the summons issued in this case April 15, 1896, and sent the same by registered letter.

(Signed) JNO. A. STREHL, *Clerk*,
By L. E. BOSWELL, *D. C.*

Affidavit Showing that Plaintiff, by Attorney, has Lodged at Home Office of Defendant Notice of Suit and Copy of Process.

Filed May 12, 1896.

I, Sylvester C. Dunham, attorney-at-law, of the city and county of Hartford and State of Connecticut, do hereby on oath testify and say that on the eighth day of May, A. D. 1896, at the request of Messrs. Turley & Wright, of Memphis, Tenn., attorneys for Mrs. Linda Y. Spratley, I placed in the hands of John M. Taylor,
49 the vice-president of the Conn. Mutual Life Ins. Co., a certain notice addressed to the president and directors of the said company, together with a copy of a process issued out of the circuit court of Shelby county, of the State of Tennessee, in which process Linda Y. Spratley is plaintiff and The Connecticut Mutual Life Ins. Co. is defendant, by which instruments an action was commenced by said Linda Y. Spratley against the Connecticut Mutual Life Ins. Co., copies of all which papers, so served by me upon said company by leaving the same in the hands of its vice-president, I attach hereto and return with this my affidavit of such service.

Witness my hand at Hartford, Conn., this the eighth day of May, 1896.

SYLVESTER C. DUNHAM.

STATE OF CONNECTICUT, }
County of Hartford. }

Personally appeared Sylvester C. Dunham, to me well known, who executed the foregoing affidavit in my presence and made solemn oath that the same is true before me, this the eighth day of May, 1896.

WALTER W. PRATT,
Notary Pub.

Copy.

To the president and directors of the Conn. Mutual Life Ins. Co. of Hartford, Conn., Hartford, Conn.:

You will please take notice that on the 15th day of April, 1896, I instituted suit against your company in the circuit court of Shelby county, Tennessee, for $12,000.00 damages. Said suit is brought to recover two policies issued by your company for my benefit on the life of my husband, Benjamin R. Spratley. The style of said suit is Linda Y. Spratley *vs.* The Conn. Mutual Life Ins. Co. of Hartford, Conn., No. 6526, A. D., of the circuit court of Shelby Co., Tenn.

Herewith I hand you copy of the process issued in said
50 suit and the return of the officer thereon.

LINDA Y. SPRATLEY,
Per TURLEY & WRIGHT, *Att'ys.*

May —, 1896.

Cost Bond.

LINDA Y. SPRATLEY }
vs.
CONNECTICUT MUTUAL LIFE INS. CO. OF HARTFORD, CONN. }

I bind myself to the defendant in the sum of two hundred and fifty dollars for the successful prosecution of this action, to be void on condition that I pay all the costs which may at any time be adjudged against the plaintiff, Linda Y. Spratley, in the event that she shall not pay the same; otherwise to remain in full force.

Witness my hand this 15th day of April, 1896.

S. J. YORK. [SEAL.]

State of Tennessee to the sheriff of Shelby county, Greeting:

You are hereby commanded to summons the Connecticut Mutual Life Insurance Company of Hartford, Connecticut, if to be found within your county, personally to be and appear before the judge of the circuit court of Shelby county, at the court-house, in the city of Memphis, on the third Monday in May next, then and there to answer Linda Y. Spratley in an action to her damage twelve thousand dollars.

Herein fail not and have you then and there this writ.

Witness John A. Strehl, clerk of said court, at office, the third Monday in March, 1896.

JOHN A. STREHL, *Clerk,*
By A. J. WILLIFORD, *Dep. Clerk.*

Came to hand April 15th, 1896, and executed same day
51 on the Connecticut Mutual Life Insurance Co. of Hartford, Conn., by reading the contents of this writ to O. N. Chaffee, special agent, he being the highest officer or agent of said company to be found in my county, whom I am informed was in my county on business connected with the subject-matter of this suit.

This May 4th, 1896.

J. A. McCARVER,
Sheriff of Shelby County, Tenn.,
By HUGH B. WHITE, *Dep. Sh'ff.*

I, John A. Strehl, clerk of the circuit court of Shelby county, do hereby certify that this is a true copy of the writ issued April 13, 1896, and of the sheriff's return thereon, this May 4, 1896.

JOHN A. STREHL, *Clerk*,
By L. E. BOSWELL, *D. C.*

Declaration.

Filed May 20th, 1896.

Circuit Court of Shelby County, Tenn.

MRS. LINDA Y. SPRATLEY
vs.
CONN. MUTUAL LIFE INS. CO. OF HARTFORD, CONN.

Plaintiff sues the defendant upon two life-insurance contracts or policies here to the court shown. Said defendant is a corporation organized under the laws of the State of Connecticut, and is doing business in Shelby county, Tenn., but has no regular office or agency therein, and said two life-insurance contracts or policies were made, issued, and delivered by it in said county of Shelby and State of Tenn. to Benjamin R. Spratley, the husband of plaintiff, who at the time was a citizen and resident of said county and State, where he continued to reside until his death.

52 The first one of said contracts or policies was made and issued by the said defendant on the 12th day of Dec., 1889. By said contract or policy the said defendant did insure the life of Benjamin R. Spratley, the husband of plaintiff, for the term of his natural life, in the sum of five thousand dollars, to be paid to the plaintiff, the wife of said insured, for her sole use and benefit, or, in case of her death before payment, to his children, or their descendants, if any survive (or to their guardians, if under age), or, if none, to his legal representatives, thirty days after due notice and satisfactory evidence of the death of the said insured should have been received at the office of the defendant in Hartford, Conn. Said policy or contract of insurance was made and issued in consideration of the annual premium of $160.15, paid to the defendant on the first day of January, 1890, and to be paid at, on, or before the same date of each and every year during the continuance of said policy.

The second one of said contracts or policies of insurance was made

and issued by the defendant on the 25th day of Feb., 1893. By said contract or policy of insurance said defendant did insure the life of the said Benjamin R. Spratley, for the term of his natural life, in the sum of three thousand dollars, to be paid the plaintiff, the wife of the insured, for her sole use and benefit, and in case of her decease before payment, to his children or their de cendants, if any survive, (or to their guardians, if under age), and, if none, to his executors, administrators, or assigns, within thirty days after due notice and satisfactory evidence of the death of the insured shall have been received at the office of the defendant in Hartford, Conn. Said policy or contract of insurance as made and executed by said defendant, in consideration of the annual premium of $116.91, paid it on the first day of September, 1893, and to be paid to it on or before the same date in each year until twenty-five annual premiums shall have been paid. Plaintiff avers and shows that her husband, the said Benjamin R. Spratley, died in the city of Memphis,
53 county of Shelby and State of Tennessee, on the 28th of February, 1896, leaving her surviving him, and she avers and shows further that due notice and satisfactory proof of said death was furnished to the defendant at its office in Hartford, Conn., on or before the 14th day of March, 1896, and more than 30 days before the institution of this suit.

And she further avers and shows that all the premiums on both of the said above policies which matured and fell due before the death of the said Benjamin R. Spratley were promptly paid, and that thereby said policies were in full force and effect at the time of his death.

And she further avers and shows that upon these facts thus set forth the said defendant was indebted to her and was bound to pay to her on or before the 14th day of April, 1896, the said sum of eight thousand dollars mentioned in said policies, with interest thereon from said date.

And she further avers and shows that she demanded payment of said sum from said defendant, but it declined and refused to pay the same, and that said sum, with interest thereon, remains unpaid and due to her under and by the terms of said policies mentioned above.

Wherefore said plaintiff says that she is injured and hath sustained damages to the amount of eight thousand dollars and interest, as set forth above. Wherefore she brings this her suit and prays that the same may be tried before a jury.

TURLEY & WRIGHT,
Att'ys for Pl'ff.

Order Allowing Decree to be Rendered.

Entered June 30th, 1896.

Mrs. LINDA Y. SPRATLEY
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

54 On motion of the plaintiff, it is ordered that she be allowed to amend her declaration filed herein by inserting therein the following averments, to wit: "Said defendant is a corporation organized under the laws of the State of Connecticut, but is doing business in Shelby county, Tennessee, but has no regular office or agency therein, and said two life-insurance contracts or policies were made, issued, and delivered by it in said county of Shelby and State of Tennessee to Benj. R. Spratley, the husband of plaintiff, who at the time was a citizen and resident in the said county and State, where he continued to reside until his death." This amendment may be made upon the face of the declaration. It will be made in red ink, so as to show that it was made under the provisions of this order.

Judgment.

Entered July 2, 1896.

Mrs. LINDA Y. SPRATLEY
vs.
CONN. MUTUAL LIFE INS. CO., HARTFORD, CONNECTICUT.

Came the plaintiff and moved the court for a judgment by default against the defendant for want of appearance or defence herein.

And it appearing to the court that the defendant is a corporation organized under the laws of the State of Connecticut, but is doing business in Shelby county, Tenn., but has no regular office or agency therein; that it issued and delivered in the county of Shelby and State of Tennessee to Benjamin R. Spratley, the husband of the plaintiff, the two life-insurance contracts or policies mentioned in the declaration; that the return of the sheriff upon the writ in this case shows that it was served on the 15th day of April, 1896, on the defendant by reading the contents of the said writ to O. N. Chaffee, special agent of the defendant, he being the highest officer or
55 agent of said company to be found in said county at the time, and being in said county on business connected with said life-insurance contracts or policies.

And it further appearing that this return was made on the 4th day of May, 1896, and that immediately the clerk of this court mailed a copy of said writ and process to the defendant at its home office in Hartford, Conn., by registered letter;

And it further appearing that the clerk has filed with the paper

herein a certificate of the fact of such mailing and has made a minute upon the docket of this court;

And it further appearing that said certificate was filed herein on the fourth day of May, 1896, and the said minute thereof was made on the docket on the same day;

And it further appearing that the plaintiff, from the affidavit of Sylvester C. Dunham on file herein on behalf of the plaintiff, did, on the 8th day of May, 1896, lodge with Jno. M. Taylor, the vice-president of the defendant, at its home office in Hartford, Conn., a notice of the bringing of this suit, which notice was accompanied by a copy of the writ or process herein and the return of the sheriff thereon;

And it further appearing that by the writ herein, which was served as aforesaid, the defendant was summoned to appear before this court on the 3rd Monday of May, 1896, that being the first day of the present term, and then and there to answer this action;

And it further appearing that the said defendant has wholly failed to make any appearance herein, and, further, that the said defendant was solemnly called to come into open court and defend said suit, but failed to do so—

It is therefore ordered that default be, and the same is now entered herein against the defendant, and that all allegations of the declaration be, and the same are, now taken as confessed.

And it is further ordered, adjudged, and decreed that the plaintiff have and recover from the defendant the sum of $8,000.00,
56 that being the total amount, principal and interest, due on the life-insurance contracts or policies described in the declaration, and also the costs; for which let execution issue.

Final Decree and Appeal.

Entered March 29, 1897.

In the Chancery Court of Shelby County, Tennessee, Part 1.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY	No. 10365. R. D.
vs.	No. ——. R. D.
LINDA Y. SPRATLEY.	

Final Decree.

Be it remembered that this cause came on to be heard at a former day of the present term, and was finally heard before the Hon. Jno. L. T. Sneed, chancellor, upon the pleadings, exhibits, and proof on file; and the court being of opinion that the complainant is entitled to the relief sought in this bill, and that the preliminary injunction granted in this cause ought to be made perpetual; it is therefore adjudged, ordered, and decreed that the said preliminary injunction be made perpetual, and that the defendant be perpetually enjoined from seeking or attempting to in any manner to assert or enforce the judgment of the circuit court of Shelby county, mentioned and

described in the pleadings and exhibits, against the complainant or its debtors or property in any manner whatever, and that the defendant pay the costs of this suit, for which let execution issue as at law.

From this decree the defendant prays an appeal to the next term of the supreme court of Tennessee to be held for the western district, at Jackson, on the first Monday in April, 1897; which appeal is granted on condition that the defendant gives, according to law, an appeal bond in the penalty of two hundred and fifty dollars
57 ($250.00), conditioned as prescribed by law.

Appeal Bond.

Filed March 29th, 1897.

We, Linda Y. Spratley, appellant, and surety, T. B. Turley, acknowledge ourselves indebted to the Connecticut Mutual Life Insurance Company in the sum of two hundred and fifty dollars, to be void if the said Linda Y. Spratley, above named as appellant, who has prayed for and obtained an appeal from the decree of the chancery court in a cause in which The Connecticut Mutual Life Insurance Co. — complainant and Linda Y. Spratley — defendant, to the next term of the supreme court of Tennessee, for the district of west Tennessee, to be held at Jackson, Madison county, on the first Monday in April next, shall pay all such costs as shall be awarded against her by said supreme court.

This 29th day of March, 1897.

LINDA Y. SPRATLEY, [SEAL.]
By TURLEY & WRIGHT.
T. B. TURLEY. [SEAL.]

STATE OF TENNESSEE, }
Shelby County, } *ss:*

I, R. H. Beard, clerk and master of the chancery court of Shelby county, do hereby certify that the foregoing — pages contain a full, true, and perfect transcript of all the proceedings had in a certain cause lately pending herein, wherein Connecticut Mutual Life Ins. Co. — complainant and L. Y. Spratley — defendant, as the same appears of record and on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said court, at office, in Memphis, this 31st day of March, A. D. 1897.

58 R. H. BEARD, *Clerk & Master,*
By EDGAR T. McHENRY, *D. C. & M.*

59 CONNECTICUT MUTUAL LIFE INS. COMPANY }
vs. } Opinion.
LINDA *J.* SPRATLEY. }

The complainant is a corporation organized under the laws of the State of Connecticut to carry on a life-insurance business and have its princip*le* situs in Hartford, in that State. For many years prior

to the year 1894 it actively prosecuted its work in the State of Tennessee, soliciting applications for life insurance and issuing polic-es upon such applications as were approved by its officers. In the year 1889 and afterwards in 1893 an agent of this company was in the State of Tennessee, and by his solicitations induced one B. R. Spratley, a citizen of that State, to apply for insurance on his own life, and upon the applications the complainant issued two polic-es, one of which was for $5,000.00 and the other for $3,000.00, payable at his death to his wife, the defendant, Linda J. Spratley. Both of these polic-es were delivered in this State.

In the year 1896 B. R. Spratley died, and proof of his death was forwarded to the company, and very soon thereafter complainant sent O. N. Chaffe, one of its employees, into the State to investigate the claim and the conditions under which the death occurred. He came and had interviews with the beneficiary, Mrs. Spratley, her brother, and other parties, of all of which he made report to his home company. Upon receiving this report the complainant, through its vice-president, wired the agent as follows: "We think case (referring to Spratley's death claim) should be settled for reserves or thereabouts." After receiving this telegram Chaffer visited Mrs. Spratley and submitted an offer to settle on the terms indicated in it. This offer having been rejected, while in this State on the business and occasion referred to, suit was instituted by the beneficiary against the insurance company for the amount alleged to be due on these polic-es, in the circuit court of Shelby county, and process was served on Chaffer, as the agent of the company. At the same time all the requirements of ch. 226 of the Session Acts of 1887 with regard to the giving other and further notice of the bringing and pendency of this suit were complied with.

The insurance company ignoring this action, in due time judgment by default was taken against it, upon which an execution was subsequently issued. Thereupon the bill in this cause attacking the judgment upon the ground that it was taken without valid service of process; that it had not at the time of the institution of the suit in question, nor had for several years prior thereto, any office or agency in Tennessee; that Chaffer, upon whom service was attempted, was a special agent, for a special purpose, in Memphis and in such special business, and that he was not an agent annually for process to issue against the complainant company, and that ch. 226 of the Acts of the Legislature of 1887, upon which the circuit court procedure rested, was void, because it violated article 5 of the amendment to the Constitution of the United States, and also the 14th amendment to the Constitution of the United States, in that under the provisions of this act a defendant was "deprived of life, liberty, or property without due process of law;" and it also violated so much of section 17 of the article of the constitution of the State of Tennessee as provides that "every man shall have remedy by due course of law." The first ground of attack will be hereafter noticed. We will at once examine the question raised upon the constitutionality of this act.

Sections # 2831, '32, '33, and '34 of the code (M. & V.), corresponding with sections # 4539, '40, '41, and '42 of Shannon's, regulate the mode of suing corporations and apply equally to foreign and domestic corporations. Chi. & A. C. R. R. *vs.* Walker, 9 Lea,
61 475; Peters *v.* Neely, 16 Lea, 280. But they did not cover the case of a foreign corporation having no resident agent in the State. Chi. & A. C. R. R. *v.* Walker, *supra*. This defect in the law discovered by this last-named case led to the passage of the act which is assailed for unconstitutionality by the complainant. The provisions of this act are embodied in sections # 4543, '44, '45, & '46 of Shannon's new code. By the first section it is provided that "any corporation claiming existence under the law of any other State found doing business in this State shall be subject to suit here to the same extent that corporations of this State are by the laws thereof liable to the same, so far as relates to any transaction bid in whole or in part within this State or any cause of action arising here, but not otherwise." Section 2 defines what is meant by the term "found doing business in this State," and in the word- "any corporation having any transaction with persons or having any transaction concerning any property situated in this State, through any agency whatever acting for it within this State, shall be held to be doing business within the meaning of section one." Section three provides that "process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be, and in the absence of such an agent it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arising took place," & etc.

In Telephone Company *v.* Turner, 4 Pickle, 265, it is held that "this act did not apply to any foreign corporation having resident agents in the county where the suit is brought," but that the case presented in this record was one within its provisions we think is clear. The question is, is it constitutional?

It may be said that in the legislature Tennessee is only
62 following in the footsteps of many other States of the Union. So diversified and widespread have been the operations of corporations that possibly every State has found for the protection of its own citizens it was necessary to adopt similar laws. In Lafayette Insurance Company *v.* French, 18 Havard, 404, with regard to a judgment obtained in a court of Ohio, — should endeavor to secure to its citizens a remedy in their domestic forum upon this important class of contracts made and to be performed within that State and fully subject to its laws, nor that proper means shall be used to compel foreign corporations transacting their business of insurance within the State for the- benefit and profit to answer them for the breach of their contracts of insurance there made and to be performed.

For a long period it has been settled that a corporation created in one State has no right under the Constitution of the United States to transact business in another State save by the consent, ex-

press or implied, of that State, and this consent may be given in such terms as the State may see proper to impose, and the terms so imposed are binding on the corporation. Paul *v.* Virginia, 8 Wall., 168. The only limitation upon the right is that the conditions imposed must not be repugnant to the Constitution or laws of the United States, that principle of natural justice which forbids condemnation without opportunity for defense—Lafayette Ins. Company *v.* French, *supra*—to wit: If a State permits a foreign corporation to do business within her limits, and at the same time provides that in suits against it for business there done process shall be served upon its agent, the provision is to be deemed a condition of the permission, and corporations that subsequently do business in the State are to be deemed to assent to such condition as fully as though they had specially authorized their agent to waive service of process. St. Clair *v.* Cox, 106 U. S., 350. Continuing in that case, the court said:

63 "Such execution must not encroach upon that principle of natural justice which requires notice of a suit to a party before he can be bound by it. It must be reasonable and the service provided should be only upon such agents as may be properly deemed representatives of the foreign corporation." As illustrating the length to which the courts have gone in subjecting foreign corporations to actions or demands which are in the State of the forum by service of process on some representative within its territorial limits, the case of Coleman Iron Works *v.* Mining Company, 15 Cold., 433; Sheckle *v.* Construction Company, 61 Mch., 226, and Earl *v.* Terre Haute Car Mfg. Company may be referred to. These cases carry the doctrine of representation far beyond which it requires of us in maintaining the judgment complained of and the case presented in this record.

In Earle *v.* Terre Haute Car Mfg. Company, *supra*, the foreign corporation in a suit by a citizen of New York, on a demand growing out of a transaction in that State, was brought into court by service on its president, who was passing through to a seaside resort and was in no sense there in his official capacity or upon any business connected with his corporation, and yet it was held that this service would sustain a judgment against it. While not feeling it necessary to agree to the decision reached, yet the following paragraph taken from the opinion in that case does meet with our approval: "The object of all service of process for the commencement of a suit or any other legal proceedings is to give notice to the party proceeded against, and any service which virtually accomplishes that end answers the requirements of natural justice and fundamental law (Gibbs *v.* Queen Ins. Company, 63 N. Y., 114), and what service shall be deemed sufficient for that purpose is to be determined by the legislative power of the country in

64 which the proceeding * * * is instituted, subject only to the limitations that the service must be such as may be reasonably *be* expected to give the notice aimed at." So in that case the supreme court of New York held that while the president of this corporation was not within the State on the business of the

corporation, yet, as it was his duty to convey notice of the commencement of the suit to his company, that he would do so could reasonable be presumed and expected.

Mr. Murphee, in his recent work on Corporations, in section 215, after speaking of the great variety among the statutory provisions for bringing foreign corporations into the home forum, says: "The purpose of such provisions is to insure the giving of the notice to the corporation. That idea is given prominence in all the decisions interpreting them. Consequently the general rule is that if the person served sustain sufficient character and rank to render it reasonably certain that the corporation would be apprised of the service the requirement of the statute is answered," and it may be added that the demand of natural justice will be thereby satisfied. Perhaps no better statement of the doctrine of substituted service can be found than that of Lord Chancellor Crawford in Hope *v.* Hope, 4 De Gex, McN. & G., p. 328, which is as follows: "In cases where a defendant is abroad the question is whether there is any person here who may be fitly served and service upon whom may be treated as equivalent to service upon the absent person himself. Now, this has been allowed in a variety of cases; for instance, where there has been an agent in this country managing all the affairs of the defendant, who is abroad, and regularly communicating with him upon his affairs, or where he has an agent here specially managing the particular matter involved in the suit. In such cases the
65 court has felt that it might safely allow service upon the agent to be deemed good service upon the person abroad, because the *re*ference is irresist*a*ble that service so made upon the agent is service either on a person impliedly authorized to accept that particular service or who certainly will communicate the process so served to the party who is not in this country to receive it himself. The object of all service is, of course, only to give notice to the party on whom it is made, so that he may be made aware of and may be able to resist that which is sought against him, and when that has been substantially done, so that the court may feel perfectly confident that service has reached him, everything has been done that is required."

It will not be assumed by this court that in the act of 1887 the legislature intended to disregard the principle of natural justice and provide for the service of process upon an agent of a foreign corporation found within the territorial limits of the State without regard to whether he was here in a representative capacity on the business of his principal, but rather the contrary, and certainly this corporation cannot be heard to complain, whatever others might do, because the agent upon whom service was made in this case was at the time in this State as the representative of the complainant, examining for it into *into* the conditions under which Spratley's death occurred, and, finally, upon the authority of his employer, submitting a proposition of compromise of the claim now in controversy. Not only had complainant transactions in this State with regard to the policies before and at the time of this delivery, but, through its agent, was found doing business in respect to them at the time of

the institution of this suit, and it cannot be otherwise than that this agent would be reasonably certain to inform his principal of
66 the fact that it had been brought. Now, in a case where this reasonable presumption may be made, do we feel constrained to overturn a beneficent statute upon the suggestion of a mere possibility that it might in *superstitious* cases be perverted to unjustifiable ends? On this point we are satisfied that the complainant was not put to judgment without due process of law, and that the statute in question is not open to the attack made on it. It is proper to add that we have carefully examined Maxmiller *v.* R. R., 34 Fdl. Rep., 286; U. S. *v.* Telephone Company, 27 Fdl. Rep., 17; R. R. *v.* Pinkney, 149 U. S., 194; *Re* Horhust, 150,653, relied on by complainant's counsel, and we find nothing in them in conflict with this conclusion.

But it is argued that the act of 1887 did not apply to this corporation, because it had filed under the requirements of ch. 66 of the Acts of 1875, sect. 12, an irrevocable power of attorney authorizing the sect. of state to accept service. To this it may be said:

First. That this agreement is in the face of complainant's bill, in which it alleges that it was a non-resident of this State and had no office or agent in Tennessee or had not had for some years preceding the institution of the suit on the policies, thus, by implication at least, negativing its present proposition.

Second. But, as a matter of law, is the contention sound? The legislature on the subject is as follows: Ch. 23 of the Acts of 1873, sect. 2, requiring foreign insurance companies to file with the treasurer of the State a written instrument authorizing any agent of such company in the State to acknowledge service of process; and 66 of the Acts of 1875, section 12, required foreign life insurance companies to file with the insurance commissioner a power of attorney authorizing the secretary of state to accept service. Chapter
67 23 of the Acts of 1873 was repealed by chapter 47 of the Acts of 1891, and chapter 66 of the Acts of 1875, as well as chapter 47 of the Acts of 1891, were repealed by chapter 160, section 49, of the Acts of 1895. All these repeals were express.

The suit brought by Mrs. Lynda Y. Spratley in the circuit court was instituted on the 15th day of April, 1896. Chapter 160 of the Acts of 1895, repealing ch. 66 of the Acts of 1875, in section 9, contains a provision requiring every foreign insurance company, fire or life, as a prerequisite to admission into the State for the transaction of business, to constitute the insurance commission its attorney to accept service. It is not claimed that the complainant company had acted in accordance with this provision. From July 1st, 1894, down to the time the suit in the circuit court was brought, complainant company was doing a limited business in Tennessee. It had a large number of policies in the State from which it collected its premiums at stated periods, and when a death occurred it sent its agent into the State to make the necessary investigation and report upon the circumstances under which the insured party died, as was done in this particular case.

Ordinarily the rule is that where civil proceedings or jurisdiction

in civil cases depend upon a statute they fall within the repeal of that statute. Enolick in J'n of Statute, S. 4, 79. Many illustrations of this rule will be found in the coses: North Carl *v.* Bond, 10 Wall. (Pa.), 351; State *v.* Brookam, 22 W. Va., 214; Stephenson *v.* Aloc, 8 Blockf. (Ind.), 508; Morgan *v.* Thoren, 7 M. & W., 400; Bartey *v.* Mason, 4 Minn., 546; Butler *v.* Palmin, 1 Hill (N. Y.), 324; Williams *v.* Lincoln County, 35 Mo., 345; Tickey *v.* People, 8 Mich., 128; Lanch *v.* Schatter, 54 Cold., 319; Anding *v.* Levy, 57 Miss., 58. But we may concede that this rule does not apply in this case, and that the power of attorney
68 given by the complainant is irrevocable and stands today as if the act of 1875 still existed, yet it does not follow that the service on Chaffer as agent in the circuit court was effectual to bring complainant into that court. The continued existence of the power of attorney does not preclude the complainant from being amenable to the operation of the act of 1887. The secretary of the State was not the agent of this corporation save in the most restricted sense, and he was located at the capitol of the State, where the discharge of his official duties properly placed him. We may concede that Mrs. Spratley might have called upon him to accept service of her process, but instituting her suit as she did, at her own home, in a remote part of the State, where there was no resident agent of complainant, but finding one there temporarily whose agency embraced the very subject of her controversy, she had a case with- the purview, and she was entitled to avail herself of the act of 1887. As this court said in Telephone Company *v.* Tanner, *supra*, this act was not one of "limitation, but of enlargement," and we are unable to discover why it should not be operative against complainant, while at the same time its power of attorney be irrevocable.

Nor can we accede to the proposition that by complying with the act of 1875, by the execution of its power of attorney to the secretary of the State, that complainant thereby made a contract with the State of Tennessee, which is protected by the contract provision of the Constitution of the United States, and that no subsequent legislation can make this corporation amenable to action in the courts of the State by service of process on any other agent. We are unable to discover any element of a contract which will
69 preclude the State thereafter from adopting legislation which contemplated bringing the corporation into our courts by service on such other agents as reasonably represented it and carrying on its business within our territorial limits. If the argument of complainant's counsel in this point is sound, if the office of the secretary of state should be abolished, this result being the act of the State, for which complainant would in nowise be responsible, then our citizens could obtain no redress for their grievances sustained at the hand of this company in their domestic courts, even if there was an agent with full power of representation residing in each county of the State. A position from which such a conclusion may be deduced we think necessarily unsound.

We deem the act of 1875 in this regard as simply imposing a

condition for the State's permission to a foreign life insurance company to come within its borders and transact business with its citizens, and there was nothing in it or in the acceptance of its terms by the complainant precluding the legislature from thereafter making other provisions by which through service upon other agents, either permanent or temporarily found here, this corporation might be made to answer in our courts for breach of its contracts made here.

The decree of the chancellor is reversed and a decree will be instead against complainant and the surety on its injunction bond for the amount of the judgment of the circuit court and interest upon it and all cost of the two courts.

BEARD, *Judge*.

70 THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at the April term, A. D. 1897.

Present: The Hon. D. L. Snodgrass, chief justice, and W. C. Caldwell, J. S. Wilkes, W. K. McAlister, and W. D. Beard, associate judges—when the following proceedings were had, to wit:

JUNE 16TH, 1897.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY
vs.
LINDA Y. SPRATLEY.

Be it remembered that this cause came on to be heard upon the transcript of the record from the chancery court of Shelby county, Tennessee, and, the same having been argued by counsel and considered by the court, the court is of opinion, and doth adjudge and decree, that the decree of the chancellor heretofore rendered in this cause is erroneous, and the same is hereby reversed, set aside, and for nothing held.

The court is further of opinion, and doth so adjudge and decree, that the injunction sued out by the Connecticut Mutual Life Insurance Company, enjoining the judgment obtained by Linda Y. Spratley against said insurance company in the circuit court of Shelby county, Tennessee, should be and it is dissolved and for nothing held; and it appearing that said Connecticut Mutual Life Insurance Company executed bond for cost in the sum of two hundred and fifty dollars ($250.00), and for injunction in the sum of $16,000, enjoining the judgment recovered in said circuit court, and that the Fidelity & Deposit Company of Maryland became its security on said bonds:

It is now ordered, adjudged, and decreed that said Linda Y. Spratly have and recover of the Connecticut Mutual Life Insurance Company and of said Fidelity & Deposit Company of Mary-
71 land, its surety on said bonds, the sum of ($8,564.41) eighty-five hundred and sixty-four $\frac{41}{100}$ dollars, being the amount of the judgment heretofore rendered in said circuit court, with inter-

est to this date; and that she recover also the costs of this court and of the court below, for all which execution may issue.

The court is of further opinion, and doth so adjudge and decree, that the act of the legislature of Tennessee entitled an act to subject foreign corporations to suit in this State, approved March 20th, 1887, being chapter 226 of Acts of 1887, and found on page 386 *et seq.* thereof, did furnish and afford due process of law and in nowise violated article 5 of the amendments of the Constitution of the United States, which provides, among other things, that no person shall be deprived of life, liberty, or property without due process of law.

The court is of further opinion, and doth so adjudge and decree, that said act of 1887 doth in nowise violate the 14th amendment to the Constitution of the United States, which provides, among other things, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The court is of opinion that said act of 1887 is constitutional, and that the service of process in this cause upon C. N. Chaffee is valid, constitutional, and effective, and that said statute of 1887 and process thereunder are due process of law, and that said statute does not violate article 5 of the amendments of the Constitution, and that the 14th amendment of the Constitution of the United States is in no way violated, nor has section 17, article 1, of the constitution of the State of Tennessee or any other provision of the constitution of the State of Tennessee been violated by said legislation.

The court is further of opinion, and doth so order, adjudge, and decree, that the Session Acts of Tennessee passed and approved 22nd of March, 1875, chapter 66, page 76 *et seq.*, sec. 12,
72 requiring the filing of a power of attorney by said Connecticut Mutual Life Insurance Company and all foreign life insurance company, and appointing the secretary of state of Tennessee as agent to be served with legal process, and the acceptance of said act by said company did not make a contract between the State and said company, and that therefore the said Session Acts of Tennessee, chap. 226, page 386, approved March 29th, 1887, designated other persons to be served with process, in nowise violate section 10, article 1, of the Constitution of the United States, which, among other things, provides that "no State shall pass any law impairing the obligation of contract." The contention of said Connecticut Mutual Life Insurance Company that article 5 of the amendments to the Constitution of the United States, guaranteeing due process of law, and *that* the 14th amendment of the Constitution of the United States aforesaid have been violated, and the contention that the aforesaid act of the legislature of Tennessee of the 22nd of March, 1875, and the act of 29th March, 1887, aforesaid, of the acts of Tennessee, impair or violate or are repugnant to section 10, article 1, of the Constitution of the United States — are therefore null and void, are overruled, and the claim aforesaid of protection under the Constitution of the United States is denied.

73 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* LINDA Y. SPRATLEY. } No. 53, Shelby Chancery Docket.

Know all men by these presents that the Connecticut Mutual Life Insurance Company and the Fidelity and Deposit Company of Maryland, principals, and G. W. Macrea and Francis Fentress, as security, bind ourselves, jointly and severally, unto Linda Y. Spratley in the sum of twelve thousand dollars, the payment of which, well and truly to be made, we bind ourselves and representatives firmly by these presents.

But the conditions of this obligation is such that whereas the above-bounden Connecticut Mutual Life Insurance Company, a corporation duly chartered and organized and existing by and under the laws of the State of Connecticut, and the Fidelity and Deposit Company, a corporation duly chartered, organized, and existing by the laws of Maryland, have obtained or are about to obtain a writ of error from the Supreme Court of the United States to the supreme court of Tennessee, sitting at Jackson, Tennessee, for the western division of Tennessee, to reverse a judgment rendered by it at its April term, 1897, against said Connecticut Mutual Life Insurance Company and against said Fidelity and Deposit Company of Maryland, as its surety, in the suit of said Connecticut Mutual Life Insurance Company *vs.* Linda Y. Spratley, said cause being from the chancery court of Shelby county, Tennessee, and the judgment being as follows: In favor of the said Linda Y. Spratley and against the Connecticut Mutual Life Insurance Company for the sum of eight thousand five hundred and sixty-four $\frac{4}{100}$ dollars, on the 16th June, 1897:

Now, if the said Connecticut Mutual Life Insurance Company and said Fidelity and Deposit Company of Maryland fail to prosecute said writ of error to effect or, fail- to make good their plea, shall answer all damages and costs and, moreover, abide by and
74 perform the judgments and decrees of the Supreme Court of the United States of America in the premises, then the obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this the 24th day of July, 1897.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By ESTES & FENTRESS, *Att'ys.*
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
[SEAL.] By FRANCIS FENTRESS,
Member Local Board Tennessee.
G. W. MACREA, *Surety.* [SEAL.]
FRANCIS FENTRESS, *Surety.* [SEAL.]

Attest:
GEO. H. GLASCOCK, *Ag't.*

MEMPHIS, TENNESSEE, *July* 24, 1897.

As clerk of the circuit court of the United States, held at Memphis, Tennessee, I hereby certify that the sureties on the foregoing bond are amply good for the amount of the penalty thereof.

[SEAL.] JOHN B. CLOUGH, *Clerk, &c.*

The foregoing bond is accepted and approved by me as chief justice supreme court of Tennessee.
This 30 day of July, 1897.

D. L. SNODGRASS,
Chief Justice Supreme Court Tennessee.

Filed August 6, 1897.

JNO. W. BUFORD, *Clerk*,
By J. E. SPRINGBETT, *D. C.*

75 *Writ of Error.*

LINDA Y. SPRATLEY
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } # 53, Shelby Chancery Docket.

The President of the United States to the honorable judges of the supreme court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, sitting at Jackson, Tennessee, for the western division of said State, in said district, before you or some of you, at the April term, A. D. 1897, of said supreme court, being the highest court of law or equity in said State of Tennessee in which a decission could be had in a suit between Linda Y. Spratley, as complainant and plaintiff, — The Connecticut Mutual Life Insurance Company, as defendant, wherein was drawn in question the validity and constitutionality of an act of the legislature of Tennessee entitled "An act to subject foreign corporations to suit in this State," approved March 29th, 1887, being chapter 226 of the Acts of 1887, and found on page 386 thereof, and which the said Connecticut Mutual Life Insurance Company contended did not furnish and afford due process of law in said cause; and also that the same violated article 5 of the amendments to the Constitution of the United States, which provides, among other things, that "no person shall be deprived of life, liberty, or property without due process of law," and the decision of the said supreme court of Tennessee sustained the validity of said act and denied said Connecticut Mutual Life Insurance Company the relief sought under said article 5 of the amendment to the Constitution of the United States so specifically set up or claimed under said clause of the said Constitution of the United States, and which the said Connecticut Mutual Life Insurance Company claimed was violated by said act of the legislature of Tennessee aforesaid.

76 And said Connecticut Mutual Life Insurance Company also further claimed that said act of 1887 of the legislature of Tennessee did violate the 14th amendment of the Constitution of *of* the United States, which provide-, among other things, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

But said court held said act valid and constitutional and in no sense violative of said 14th amendment to the Constitution of the United States, and denied to said Connecticut Mutual Life Insurance Company the relief so specifically set up or claimed under said section of the Constitution of the United States.

And because said supreme court of Tennessee in said cause did hold and decree that the service of process in said cause upon O. N. Chaffee was valid, constitutional, and effective, and that said statute and process thereunder are due process of law, and that said statute does not violate article 5 of the amendments to the Constitution, nor the 14th amendment to the Constitution of the United States, and denied to said Connecticut Mutual Life Insurance Company the relief so set up or claimed under said clauses of the Constitution of the United States, and there was drawn in question the legality and validity of the Session Act of Tennessee passed and approved March 22nd, 1875, chap. 66, page 76, authorizing the filing of an irrevocable power of attorney by said Connecticut Mutual Life Insurance Company and all foreign insurance companies, appointing secretary of the State of Tennessee as agent to be served with legal process, to the exclusion of others.

And the Session Acts of Tennessee, chap. 226, page 386, approved March 29th, 1887, designating other persons not legally the representatives of said Connecticut Mutual Life Insurance Company and other foreign insurance companies in like condition to be served with process, which said acts said Connecticut Mutual Life
77 Insurance Company specially set up and claimed did violate sec. 10, art. 1, of the Constitution of the United States, which, among other things, provides "that no State shall pass any law impairing the obligations of contracts," and said supreme court of Tennessee did sustain the validity of said acts last mentioned and declared the same to be in nowise violative of said sec. 10, art. 1, of the Constitution of the United States, and so denied to said Connecticut Mutual Life Insurance Company the relief claimed under said clause of the Constitution of the United States.

And the said supreme court of Tennessee in said cause aforesaid did adjudge and decree that art. 5 of the amendment to the Constitution of the United States guaranteeing due process of law and the 14th amendment to the Constitution of the United States had not been violated by said act of the legislature of Tennessee of March 22nd, 1875, and the act of March 29th, 1887, aforesaid, and that the same were not violative of or repugnant to section 10, art. 1, of the Constitution of the United States, and said court decided said ques-

tions against said Connecticut Mutual Life Insurance Company in said cause and denied to it its rights under said sections of the Constitution of the United States so specifically set up or claimed by said company, and in said decision a manifest error has happened, to the great damage of said Connecticut Mutual Life Insurance Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment herein be given, that, under your seal, distinctively and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the second Monday in October, A. D. 1897, next, in the Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct what error which of right and according to the law and the custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
78 of the said Supreme Court of the United States, and the seal of the circuit court of the United States for the western district of Tennessee, western division, at Memphis, Tennessee, this 24th day of July, A. D. 1897, and of our Independence the one hundred and twenty-first.

JOHN B. CLOUGH,

[SEAL.] *Clerk U. S. Circuit Court for Western Division of the Western District of Tennessee.*

79 THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *vs.* LINDA Y. SPRATLEY } Assignment of Errors.

Comes the appellants, The Connecticut Mutual Life Insurance Company, and say that — the record and proceedings in the above-entitled cause there is manifest error, and they assign for error the following portion of the decree of the supreme court of Tennessee:

1st. Be it remembered that this cause came on to be heard upon the transcript of the record from the chancery court of Shelby county, Tennessee, and, the same having been argued by counsel and considered by the court—

The court is of opinion and doth adjudge and decree that the decree of the chancellor heretofore rendered in this cause is erroneous, and the same is hereby reversed, set aside, and for nothing held.

2nd. The court is further of opinion and doth so adjudge and decree that the injunction sued out by the Connecticut Mutual Life Insurance Company, enjoining the judgment obtained by Linda Y. Spratley against said insurance company in the circuit court of Shelby county, Tennessee, be dissolved and for nothing held; and it appearing that said Connecticut Mutual Life Insurance Company

executed bond for costs in the sum of $250 and for injunction in the sum of $16,000, enjoining the judgment recovered in said circuit court, and that the Fidelity & Deposit Company of Maryland became its security on said bonds—

It is now ordered, adjudged, and decreed that Linda Y. Spratley have and recover of the Connecticut Mutual Life Insurance Company and of said Fidelity & Deposit Company of Maryland, its surety on said bonds, the sum of $8,564.41, being the amount of the judgment heretofore rendered in said circuit court, with interest to this date, and also the costs of this court and the court below; for all which execution may issue.

80 3rd. The court is of further opinion and doth so adjudge and decree that the act of the legislature of Tenn. entitled Act to subject foreign corporations to suit in this State, approved March 29, 1887, being chap. 226 of Acts of 1887, and found on page 386 thereof, did furnish and afford "due process of law" and in nowise violated art. 5 of the amendments to the Constitution of the U. S., which provides, among other things, that "no person shall be deprived of life, liberty, or property without due process of law."

4th. The court is of further opinion and doth so adjudge and decree that said act of 1887 doth in no sense violate the 14th amendment to the Constitution of the U. S., which provides, among other things, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U. S., nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

5th. The court being of opinion that said act of 1887 is constitutional, and that the service of process in this cause upon O. N. Chaffee is valid, constitutional, and effective, and that said statute and process thereunder are due process of law, and that said statute does not violate article 5 of the amendments of the Constitution, and that the 14th amendment of the Constitution of the U. S. is in no way violated, nor has sec. 17, art. 1, of the constitution of the State of Tennessee or any other provision of the constitution of the State of Tennessee.

6th. The court is further of opinion and doth so order, adjudge, and decree that the Session Act- of Tenn. passed and approved 22 March, 1875, chapter 66, page 76, authorizing the filing of an irrevocable power of attorney by said Connecticut Mutual Life Insurance Company and all foreign insurance companies, appointing the secretary of State of Tennessee as agent, to be served with legal process to the exclusion of others, and the Session Acts of Tenn.,

81 chap. 226, page 386, approved March 29th, 1887, designating other persons, not legally the representatives of the complainant, to be served with process, in nowise violated sec. 10, art. 1, of the Constitution of the U. S., which, among other things, provide that "no State shall pas- any law impairing the obligation of contracts."

7th. The contention of said Connecticut Mutual Life Insurance Company that article 5 of the amendments to the Constitution of the

U. S., guaranteeing due process of law, and that the 14th amend ment of the Constitution of the U. S. aforesaid have been violated and the contention that the aforesaid act of the legislature of Ten nessee of 22 March, 1875, and the act of 29 March, 1887, aforesai of the Acts of Tenn. impair or violate or are repugnant to sec. 1 art. 1, of the Constitution of the U. S., and are therefore null an void, *and* are overruled, and the claim of aforesaid protection unde the Constitution of the U. S. is denied.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By ESTES & FENTRESS, *Solicitors.*

Filed 6th day of Aug., 1897.

JNO. W. BUFORD, *Clk,*
By J. E. SPRINGBETT, *D. C.*

82 *Certificate.*

Supreme Court of Tennessee, April Term, A. D. 1897.

LINDA Y. SPRATLEY
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } # 53, Shelby Chancery Docke

I, David L. Snodgrass, chief justice of the supreme court of Ten nessee, highest court in the State of Tennessee, either at law or i equity, composed of David L. Snodgrass, chief justice; John S Wilkes, William K. McAlister, W. C. Caldwell, and W. D. Beard associate justices, hereby certify that in the above-styled cause latel pending in the supreme court of Tennessee and decided against th plaintiff in error, The Connecticut Mutual Life Insurance Company there was drawn into question the validity of the act of the legisla ture of Tennessee entitled "An act to subject foreign corporations t suit in this State," approved March 29, 1887, being chap. 226 of th Acts of 1887, which the said Connecticut Mutual Life Insurance Company claimed and contended did not furnish and afford du process of law, but did violate art. 5 of the amendment to the Con stitution of the United States, which provides, among other thing that "no person shall be deprived of life, liberty, or property with out due process of law," and the decision of the supreme court o Tennessee, at its April term, 1897, sustained said act as legal an valid and in nowise violative of said art. 5 of the amendments t the Constitution of the United States, and denied to said Connecticu Mutual Life Insurance Company the relief claimed under said art. of the amendments to the Constitution.

And said supreme court of Tennessee, at said term in said caus in which the said act of 1887 was called in question as violating th 14th amendment of the Constitution of the United States, whic provides that "no State shall make or enforce any law whic shall abridge the privileges or immunities of any citizen of th

United States, or deprive any person of life, liberty, or property without due process of law, or deny to any person
83 within its jurisdiction the equal protection of the law" did hold said act valid and constitutional and in no sense violative of said 14th amendment, and denied to said Connecticut Mutual Life Insurance Company its specific claim and contention that the same violated said amendment, but said supreme court decided that said act was valid and denied the relief sought, and that said act of 1887 — constitutional, valid, and effective, and that the service of process thereunder was likewise, upon O. N. Chaffee, constitutional, valid, and effective, and that said statute and process thereunder were due process of law, not violative of or repugnant to art. 5 of the amendment- of the Constitution and of the 14th amendment of the Constitution of the United States, and so denied said Connecticut Mutual Life Insurance Company the relief sought, and decided said cause against them and sustained the validity of said acts, and said cause was decided against the Connecticut Mutual Life Insurance Company, and there was further brought in question and decided against The Connecticut Mutual Life Insurance Company, plaintiff in error, the validity of the Session Act- of Tennessee passed and approved March 22nd, 1875, chap. 66, page 76, authorizing the filing of an irrevocable power of attorney by said Connecticut Mutual Life Insurance and all foreign insurance companies appointing the secretary of state of Tennessee as agent to be served with legal process to the exclusion of others, and the Session Acts of Tennessee, chap. 226, page 386, approved March 29th, 1887, designating other persons not legally the representatives of the Connecticut Mutual Life Insurance Company and other foreign insurance companies in like condition, and the court held that said acts above stated were in nowise repugnant to or violative of sec. 10, art. 1, of the Constitution of the United States, which, among other things, provides that "no State shall pass any law impairing the obligations of contracts," and denied to said Connecticut Mutual Life Insurance Company its claim for relief and protection thereunder, and the court sustained all said several acts above stated of the legislature as constitutional and valid and
84 as in nowise repugnant to or violative of said several sections of the Constitution of the United States aforesaid, and denied to said Connecticut Mutual Life Insurance Company in said cause the relief thereunder claimed, and said decision in all things sustained the constitutionality and validity of said session acts and was in favor of said Linda Y. Spratley and against the Connecticut Mutual Life Insurance Company.

Witness the Honorable David L. Snodgrass, chief justice of the supreme court of Tennessee, this 24th day of July, 1897.

D. L. SNODGRASS,
Chief Justice Supreme Court, Tenn.

Filed August 14th, 1897.

JNO. W. BUFORD, *Clk*,
By J. E. SPRINGBETT, *D. C.*

85 *Citation.*

In the Supreme Court of Tennessee, at Jackson, Tennessee, April Term, 1897.

LINDA Y. SPRATLEY
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } # 53, Shelby Chancery Docket.

To the above complainant, Linda Y. Spratley, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 2nd Monday of November, 1897, pursuant to an appeal and writ of error filed in the clerk's office of the supreme court of the State of Tennessee, sitting at Jackson, Tennessee, for the western division of said State, at its April term, 1897, and taken and issued to the said *to the said* supreme court in the above-entitled cause, wherein The Connecticut Mutual Life Insurance Company is appellant in error and you are the defendant in error, to show cause why the judgment in said appeal and writ of error mentioned and rendered in said cause by said supreme court against it should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. David L. Snodgrass, chief justice of the supreme court of Tennessee, this 24 day of July, 1897.

D. L. SNODGRASS,
Chief Justice Supreme Court of Tenn.

Due and legal service of the within is accepted for Linda Y. Spratley Aug. 3rd, 1897.

TURLEY & WRIGHT,
Solicitors for Mrs. Linda Y. Spratley.

Filed Aug. 14th, 1897.

JNO. W. BUFORD, *Clerk,*
By J. E. SPRINGBETT, *D. C.*

86 THE STATE OF TENNESSEE:

I, Jno. W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing 86 pages *is* a true, perfect, and complete copy of the record of all the proceedings by said court at its April term, 1897, in the case of Connecticut Mutual Life Ins. Co. against Linda Y. Spratley, as appears of record now on file in my office.

Seal Supreme Court of Tennessee, Western Division, Jackson, Tenn.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 6 day of Oct., A. D. 1897, and of the Independence of the United States the 121 year.

JNO. W. BUFORD, *Clerk*,
By J. W. BUFORD, JR., *D. C.*

Endorsed on cover: Case No. 16,697. Tennessee supreme court. Term No., 484. The Connecticut Mutual Life Insurance Company, plaintiff in error, *vs.* Linda Y. Spratley. Filed October 18th, 1897.

No. [illegible] 1897.

MAR 30
JAMES H. McKE

Brief of Estes for P. C.

Filed Mar. 30, 1898.

IN THE

Supreme Court of the United States

October Term, 1897.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs. } No. 484.

LINDA Y. SPRATLEY.

Brief and Argument

For Plaintiff in Error in Resistance of the Motion of the Defendant to Dismiss, also the

Assignments of Error and Brief

For Plaintiff in Error on the Merits of the Case.

B. M. ESTES,

Solicitor for Plaintiff in Error.

E. C. TOOF & CO., PRS. AND LITHS., MEMPHIS.

IN THE

Supreme Court of the United States.

October Term, 1897.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error,

vs. } **No. 484.**

LINDA Y. SPRATLEY, Defendant in Error.

BRIEF AND ARGUMENT

For Plaintiff in Error in Resistance of the Motion to Dismiss and Affirm made by the Defendant in Error, and also the

ASSIGNMENTS OF ERROR AND BRIEF

For Plaintiff in Error on the Merits of the Case.

The plaintiff in error, by its writ of error in this case, seeks redress in this court against a judgment by default of a State court taken, as claimed, *without due process of law*, and the present expedient of adversary counsel by their motion to affirm, which might defeat an oral argument of the merits, furnishes new ground of complaint that the plaintiff in error is sought to be condemned without a hearing in ordinary course.

First.

The motion to dismiss is thus stated in adversary counsel's brief: "Linda Y. Spratley, the defendant in error, moves the court to dismiss the writ of error herein because there has been no return of the original writ of error and

because the writ of error and citation were made returnable more than thirty days from the day of the signing of the citation."

In reference to the first ground of the motion, counsel say in their brief: "The original writ has never been returned. A copy has been substituted in its place." This is a strange and palpable mistake. The record (page 48, etc.) sets out the writ of error in full and gives no intimation that the original was never returned. If matter dehors the record may be looked to, it will be found that the clerk of the State Supreme Court neglected when he sent the transcript to the clerk of this court to also send the writ of error and citation; but when advised of the neglect he promptly sent them, and since October 19, 1897, these documents have been on file in this court. The clerk of the State Supreme Court has the letter of the clerk of this court of date October 19, 1897, saying: "Yours of 14th inst. inclosing *original writ of error* and *original citation* in case of Connecticut Mutual Life Ins. Co., plaintiff in error, v. Spratley, duly received," etc.

In view of the decisions of this court in Mussina v. Cavazos, 6 Wall. 355, and Blitz v. Brown, 7 Wall. 693, this irregularity is not serious. The writ was served when deposited with the clerk of the State Supreme Court, and this court will allow the writ to be filed "at any time during the term in which the return day falls." The clerk of this court will sustain the statement of facts as here presented. The frivolousness of the first ground of the motion to dismiss is thus made apparent.

The second ground of the motion is not sustainable. Insofar as this objection goes to the return of the *citation* more than thirty days after its date, the opinion of this court in Shute v. Keyser, 149 U. S. 649, is decisive authority against the motion. There the question now made was involved, and the opinion of the Chief Justice disposes of it in the following language: "It is true that the rules so provide, but as the purpose of the citation is notice, so that the appellant may appear and be heard, any defect in that regard is not

jurisdictional and a new citation might be taken out if necessary, which it is not, as the appellees have appeared generally."

Seagrist v. Crabtree, 127 U. S. 773.

Here the appellee has appeared generally and is now pressing a motion to affirm. Besides, the appellee's counsel indorsed on the citation "*due and legal service* of the within is accepted," etc. Trans. p. 54.

As to *the return day* of *the writ of error*, it seems probable that it was inadvertently drawn from a form prescribed before the promulgation of the amendment of subdivision 5 of rule 8 (137 U. S. 710). It is returnable more than thirty days after the signing of the citation, but it is submitted that this mere mistake in the return day is not vital and jurisdictional. This writ is the process of this court addressed to the Supreme Court of Tennessee; it is signed and sealed and perfect in all respects, except that by inadvertence the direction of the amendment of subdivision 5 of rule 8 has been overlooked. It was duly served, and the State court has obediently sent the record and proceedings "with all things concerning the same" to this court, as commanded. The appellee has entered a general appearance, and now, after the return day, when the case is *rectus in curia*, the motion is made to dismiss the writ solely on the ground that there has been a mistake in the return day.

But it seems to be unnecessary to argue this point elaborately, inasmuch as under the broad and liberal provisions of section 1005 of the revised statutes this court may allow an amendment of the writ of error so as to make the return day conform to the directions of the amendment of subdivision 5 of rule 8; and if necessary in the opinion of this court, a motion to thus amend is now made.

And even if the court is of the opinion that the writ is bad and not amendable, the plaintiff in error is clearly entitled to ask to withdraw the record in order to sue out a new writ of error, inasmuch as the time limited for a writ of error has not expired; and if necessary, the motion is now made by the

plaintiff in error for leave to withdraw the record and sue out a new writ of error.

Porter v. Foley, 16 How. 393.
Blitz v. Brown, 7 Wall. 693.

It is submitted, however, that this will not be necessary, and it is believed that adversary counsel will not desire to provoke the delay incident to this course.

Second.

It is somewhat humiliating to the counsel for the plaintiff in error that the learned adversary counsel should so far depreciate his best effort to sustain his client's cause as to assume that the writ of error was sued out for mere delay, and to enter a motion to affirm based on this idea. But there is comfort in the consideration that, as stated by the counsel in his brief, the motion to dissolve the preliminary injunction before the chancellor involved the legal merits of the case and was elaborately argued, and that his decision on this motion and also at the hearing on the merits was for the plaintiff in error. Thus, in the progress of the suit there have been two decisions for the plaintiff in error and but one for the defendant. And yet in this court it is claimed that the one judgment for the defendant should be affirmed on mere motion.

It is, moreover, comforting to counsel to know that this motion is made by distinguished counsel without seeing the brief of his adversary, which is appended to this in resistance of the motion to affirm, and which was prepared for the hearing without reference to this motion.

That adversary counsel had not seen the brief of the counsel for the plaintiff in error excuses also certain palpable errors in his brief, which are now briefly enumerated:

1st. The first point stated and discussed on page 8 of the counsel's brief is not made or insisted on.

2nd. The second point of the brief elaborately discussed on pages 9–13 is not here involved. The decision of the State Supreme Court that *a proper construction of the act of*

1887 embraced this case is not and cannot be controverted here. That is no Federal question.

3rd. On page 21 of his brief, the counsel is mistaken in stating that "counsel for the insurance company denied the proposition that chapter 66 of the acts of 1875 was repealed by section 49, chapter 160, of the acts of 1895." No such denial was ever made. The brief when read shows quite clearly what the contention is in this respect. It was never insisted that since the act of 1895 there was any law "*compelling* the Secretary of State to accept service of process for any foreign life insurance company." The insistence has always been that the *power of attorney* executed in pursuance of the act of 1875 *expressly empowered the Secretary of State, as the insurance company's attorney in fact, to accept service for this company*, and also *authorized the service of process on him.*

4th. It is true that counsel for the insurance company did in the State court, as stated on page 26 of the brief of adversary counsel, contend that this case was not embraced within the terms and intent of the act of 1887; but when that court decided this point, the decision was conclusive. Error predicated of that decision could not be insisted on in this court.

Indeed, perhaps the greater part of the brief of counsel on this motion is devoted to questions not made in this court. In view of these mistakes of the learned counsel, and of the argument of the brief, it is not strange that they should also be grievously mistaken in assuming that this writ of error is prosecuted for mere delay.

With these preliminary remarks, the brief on the merits is humbly and respectfully submitted for the consideration of the court.

STATEMENT OF CASE.

The plaintiff in error seeks here to review the judgment, and decision of certain *federal questions* by the Supreme Court of Tennessee.

This bill in equity was filed in the Chancery Court of Shelby County, Tennessee, on October 10, 1896, by the Connecticut Mutual Life Insurance Company against Linda Y. Spratley to enjoin the enforcement of a *judgment by default* taken in favor of the defendant against the plaintiff in error, in the Circuit Court of Shelby County, Tennessee, in July, 1896. The judgment is alleged to have been founded on two life policies of insurance issued by the insurance company, and it is charged that "the said policies upon which said judgment was rendered were obtained by the assured *upon false and fraudulent representations*, and on this and other grounds they were void." The bill alleges that "there is nothing due the defendant on said policies or on said judgment, and the attempted enforcement thereof by the means stated above is inequitable and wrongful." Trans. p. 2.

The plaintiff in error was a non-resident of Tennessee when the action at law was instituted, had no office or agent and was not "doing business" in that State. After the death of the assured, as is customary in such cases, a special employee of the company, and not by any means *its representative to accept or be served with process*, visited Memphis to investigate and report to the company the facts of the case, and while there the legal process in the suit on the policies was served on him, in supposed conformity to the provisions of the extraordinary and radical act of the Legislature of Tennessee, approved March 29, 1887, which is copied in full in the appendix to this brief. It was distinctly alleged that the act of 1887 was unconstitutional and that the service of process was *not* "*due process of law*" and violated article 5 of the amendments to the Constitution of the United States, and the

14th amendment, which provides "that no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property *without due process of law*, nor deny to any person within its jurisdiction the equal protection of the laws."

Another federal question was raised and decided by the State Supreme Court against the plaintiff in error. It was this: While the plaintiff in error was doing business in the State of Tennessee, from 1870 to 1894, it strictly complied with the statutory laws of the State, and especially with the requirement and condition of section 12 of the act of March 22, 1875, which is entitled "An Act to regulate the business of life insurance in the State of Tennessee." This entire act is copied in the appendix. It was claimed that the compliance with this condition of the law and the execution of the power of attorney authorizing the Secretary of State to acknowledge service of process (which power of attorney should be irrevocable "even though the company should retire from the State or be excluded therefrom") constituted a contract between the company and the State to the effect that the former should be brought into the courts of the State through the Secretary of State as its attorney in fact, and that the subsequent act of 1887 subjecting it to suit by service of process on any agent, "*no matter what character of agent such person may be*," so that it might be sued by service of process on some person who was not in any sense its representative, *impaired the obligation of the contract* and violated section 10 of Article 1 of the Constitution of the United States. It is not contended that *the act itself* constituted a contract which could not be repealed nor amended, but that in this respect it was the proposed terms of a contract which, when accepted and the power of attorney executed in conformity thereto, made the contract; and which by the express terms of the act became irrevocable although the company should retire from the State or be excluded. The subsequent repeal of this *act* did not affect or repeal *the continuing contract* made in pursuance of its terms. The power of attorney prescribed by the State officials in pursuance of the act expressly

provides: "And the said company, *in consideration* of the privilege of doing business in said State of Tennessee, *consent to and with said State of Tennessee* for the benefit of all persons concerned *that service of such process upon said Secretary of State* shall be taken and held to be valid as if served upon it, the said company above named, according to the laws of said State of Tennessee or any other State, and the said company does hereby further *consent* that *in case it, the said company, shall cease to transact business in the State of Tennessee, said Secretary of State shall be considered and held as continuing to be attorney for it, the said company, for the purpose of process as aforesaid*," etc.

It is not and cannot be denied that at the date of the passage of the act of 1887 and at the commencement of the suit on these policies the Secretary of State, by virtue of the contract and power of attorney made in pursuance of the act of 1875, *was the continuing attorney in fact of this company upon whom the process could and should have been served.* The State, by the act of 1887 providing that service on an employee *who was not the representative of the company*, violated the letter and spirit *of this contract* made under the terms proposed by the act of 1875. Although the chancellor decided the case for the company, the Supreme Court of the State in express terms decided these federal questions against it, and hence the writ of error and the pendency of the case in this court.

ASSIGNMENTS OF ERROR.

1st. The Supreme Court of Tennessee erred in adjudging and deciding that the service of the legal process in the suit at law upon the policies of insurance, on O. N. Chaffee, the special *employee* of the plaintiff in error, while temporarily in Memphis to investigate and report the facts in reference to the claim under these policies, was "due process of law and not in violation of the 5th and 14th amendments of the Constitution of the United States."

2nd. The said court erred in adjudging and deciding that the act of the Legislature of Tennessee entitled "An Act to subject foreign corporations to suit in this State," approved March 29, 1887, being chapter 226 of the Acts of 1887 and found on page 386 of the published Acts of 1887, *and the enforcement thereof* 'doth in nowise' violate the 5th or the 14th amendments of the Constitution of the United States."

3d. The said court erred in adjudging and deciding that the acceptance by the plaintiff in error of the terms and conditions of section 12 of the act of the Legislature of Tennessee passed and approved March 22, 1875, chapter 66, on page 76 et seq. of the published Acts of 1875, by executing the power of attorney appointing the Secretary of State as its attorney to accept or be served with legal process in all suits in the courts of Tennessee, as shown by this record, did not constitute a contract between the State of Tennessee and the plaintiff in error, and that the provisions of the act of 1887 of said Legislature authorizing the service of process on any agent of said company, "no matter what character of agent such person may be," and the enforcement of said act of 1887 by the service of the legal process in the suit at law on the two policies of insurance shown in this record on O. N. Chaffee, a special employee of the plaintiff in error temporarily in Memphis only to investigate and report on the claim under said policies after the death of the assured, did not violate section 10 of Article 1 of the Constitution of the United States, which, amongst other things, provides that "no State shall pass any law impairing the obligation of contracts."

These federal questions are pointedly and expressly made in the pleadings in this case, and have been clearly decided against the plaintiff in error by the State court.

Trans. pages 2, 3, 48, 49, 50, 52.

BRIEF OF THE ARGUMENT.

Firs .

If there exists at this time in many States a growing prejudice against corporations, and especially against foreign corporations, and a tendency toward harsh and unjust legislative enactments affecting the rights and interests of such corporations, it is well that when their rights are attacked or imperiled they have the federal tribunals, exalted above the reach of popular excitement, to which they may appeal for protection and redress.

The question involved in this case is one of grave concernment to the plaintiff in error here, and to all other private corporations doing business in other States of the Union than their own. Have the liability and personal rights of the plaintiff in error been adjudicated *without due process of law* within the meaning of the Constitution of the United States by the Supreme Court of Tennessee? We submit that they have been, and now attempt to establish the proposition.

This record shows without contradiction that the plaintiff in error transacted business in full compliance with the laws of the State in Tennessee from 1870 to July 1, 1894. At the last named date it withdrew from the State and ceased to do business therein, because of the excessive mortality of its members and of the excessive rate of taxation imposed by the State.

Trans. pp. 14, 16.

The policies in question here were issued in 1893, and it must be borne in mind that the plaintiff in error was then doing its business as to service of process, not under the act of 1887, but under the act of 1875, and consequently it never in any manner consented to or became amenable to the harsh terms of this act of 1887. It entered the State of Tennessee in 1870 "to do business" after a full compliance with the

terms prescribed by the then existing laws, and on March 17, 1876, it complied fully with the terms and conditions of the act of 1875 and executed its irrevocable power of attorney appointing the Secretary of State to acknowledge service of process, and providing that "*service of any such process* upon said Secretary of State shall be taken and held to be valid as if served on it, the said company, etc." The company continued to transact its business in the State until 1894, when it withdrew from the State and ceased its business there.

Trans. pp. 21, 22, 14.

By *the emphatic terms of the act of* 1875 *and of the power of attorney, the withdrawal of the company from the State did not revoke or affect the power of attorney;* but, *after that event, as before, it was subject to the jurisdiction of the State courts by process served on the Secretary of State as its agent.*

The compliance with the conditions of the act of 1875 and the execution of the power of attorney are regarded as a submission to the jurisdiction of the State and its courts, and the company thereby in a sense acquired a domicile in Tennessee.

Osborne v. Insurance Company, 51 Vermont 280.
Insurance Company v. Woodworth, 111 U. S. 145.
Life Association v. Vogel, 76 Ala. 441.
Ex parte Schollenberger, 96 U. S. 374.

The method of acquiring jurisdiction prescribed by the statute and the power of attorney is exclusive.

Oakland v. Insurance Company, 69 Md. Rep. 248.
Liblong v. Insurance Company, 82 Pa. (St.) 413.
Thayer v. Tyler, 10 Gray 164.
Tusten v. Eastland, 89 Mo. 13.

In these cases, as here, the foreign insurance companies had complied with the statutes prescribing that a power of attorney should be executed, and the courts held that service on other supposed agents was insufficient.

Under these circumstances, while this company had submitted to the jurisdiction of the State, with its agent expressly

empowered to be served with process, and that agency exclusive, it would seem that service of process on a *mere employee* temporarily in the State, who had no authority to represent it, except to investigate and report the facts of the case, and not its direct representative, or alter ego in any legal sense, was not *due process of law.*

This court has said, "Can a State make anything due process of law which by its own legislation it chooses to declare such? To affirm this, is to hold that the prohibition to the States is of no avail or has no application when the invasion of private rights is effected under the forms of State legislation."

Davidson v. New Orleans, 96 U. S. 97, 102.
Railroad v. Chicago, 166 U. S. 235.

The recognized legal principle is, that a foreign corporation cannot exercise its franchises and do business in another State except *by comity*, or in pursuance of statutory conditions and authority. In this case the plaintiff in error obtained this right by compliance with the terms and conditions of the act of 1875, and was exercising it in 1887 when the act of that year was passed. That act did not change the attitude or condition of this company in the State of Tennessee; it simply, as virtually held by the State court, prescribed a new method of subjecting it to the jurisdiction of the State courts. The company never in any manner, directly or by implication, assented to the terms of this act, and is not, therefore, bound by it; so that the simple question is, whether by the enforcement of that act the plaintiff in error was subjected to the jurisdiction of the court *by due process of law.*

The general rule is that notice to an agent is notice to the principal, but notice to the agent to bind the principal must be *within the scope of the agent's authority*, and notice to the agent of any fact outside of the agency will not affect the principal. These are rudimentary principles. In Railroad Company v. Elliott, 1 Cold. (Tenn.) Rep. 611, the court say: "The established rule that notice to an agent in the transaction for which he is employed and *within the scope of his author-*

ity is notice to the principal, applies to corporations as to a natural person."

In Insurance Company v. French, 18 How. 407, this court say: "The inquiry is not whether the defendant was personally within the State, but whether he, or someone authorized to act for him *in reference to the suit*, had notice."

That this *employee*, temporarily in the State simply to investigate and report to the company the facts of this case, without any authority beyond this, was not authorized *to act for it in reference to the suit*, and that the service of process on him was not *within the scope of his powers*, seem to be quite obvious. And that while in the State he received a telegram from the company to the effect "We think case should be settled for reserve or thereabouts" is of no importance when *it is fully proven that the employee had no authority to settle or compromise or bind the company in any manner.*

Trans. p. 27.

The terms and extent of Chaffee's authority to represent the company are proven by the written contract itself and by Chaffee's and Taylor's depositions.

Trans. pp. 22, 23, 16, 25, 26.

York's testimony of what Chaffee said to him of his agency is incompetent, and of no force in conflict with the other clear testimony on this point.

The State court by its opinion (Beard, J., Trans. p. 41) seems to assume that the test of valid service of process is whether the notice actually reaches the defendant. The judge cites an extreme case and says: "While not feeling it necessary to agree to the decision reached, yet the following paragraph taken from the opinion in that case does meet with our approval: 'The object of all service of process for the commencement of a suit or any other legal proceedings is to give notice to the party proceeded against, and any service which virtually accomplishes that end answers the requirements of natural justice and fundamental law' (Gibbs v. Queen Insurance Co., 63 N. Y. 114), and *what service shall be*

*deemed sufficient for that purpose is to be determined by the legislative power of the country in which the proceeding * * * is instituted, subject only to the limitations that the service must be such as may be reasonably expected to give the notice aimed at.*" The learned justice proceeds: "So in that case the Supreme Court of New York held that while the president of this corporation was not within the State on the business of the corporation, *yet as it was his duty to convey notice* of the commencement of the suit to his company, that he would do so could be reasonably presumed and expected."

If this doctrine, that if it may be "reasonably presumed and expected" that a party on whom legal process is personally served will give notice to the real defendant, then the service is valid be accepted, or even that actual knowledge by the non-resident defendant of the commencement of the suit without regard to due service of process, is good service, then the well established rule of this court in Pennoyer v. Neff, 95 U. S. 714, and Tripp v. Street R. R. Co., 144 U. S. 126, that service by sending process from the State of the situs of the suit into the State of defendant's domicile is not valid service, even if actually received, must be repudiated, and it would follow that process against A served on B would be good if it was reasonably certain that B would inform A of the service, or even if it be shown by proof that he did actually inform him. That it is reasonably certain that the party personally served will inform the defendant, or that proof that the defendant actually knew of the institution of the suit, cannot be the test of the jurisdiction of the court, but rather, that a proper representative of the defendant has been duly served with valid legal process; and in that event it is not material to the jurisdiction whether the proper agent actually informed the principal of the suit or not. The case of Gibbs v. Queen Insurance Company, 63 N. Y. 114, cited by the State court in its opinion, involved no question of due process of law within the meaning of the Constitution.

Then, aside from the effect on this question of the fact that this company actually had a representative in Tennessee specially and formally empowered to be served with process, it is

submitted that the service of process in this case was invalid. And of course the sanction of the act of 1887 can not make the service valid unless the service of process prescribed by it meets the demands of natural justice within the meaning of the constitutional limitation.

The act of 1887 authorizing the service of process "*on any agent*" found within the county, "*no matter what character of agent such person may be*" breathes seemingly the spirit of antagonism to the restraints of constitutional limitations and of natural justice. Under that intensive language it makes no difference that the service of process is not *within the scope of the agent's authority*, or, in the language of this court, that the agent was not authorized to act for the principal "*in reference to the suit.*" And the service of the process on *an employee* who was temporarily present, without any authority to represent the principal, except to investigate and report facts, was a fitting enforcement of the statute. And the injustice of the enforcement of the statute is emphasized by the fact that at the time, the principal had its legal and formal agent in the State *expressly appointed for the service of process.*

It is noteworthy that this act of 1887 contemplated that this service on any agent "no matter what the character of the agent might be" would be ineffectual, for after prescribing such service it proceeds in the same section as follows: "but in order that the defendant corporation may also have *effectual* notice, it shall be the duty of the clerk to immediately mail a copy of *the process* to the home office, etc.," thus providing for the sending of process from one State into another, which had been expressly reprobated by the decision of this court.

In Phillips v. Insurance Company, 62 Iowa 633, the service of legal process was on "C. E. Hambleton, assistant manager of agencies of said association and general agent of defendant," and a judgment by default was taken. Motion to set aside judgment "because the defendant had not been served as required by law and the court had no power or authority to entertain jurisdiction and to render judgment." The evi-

dence showed that Hambleton was in Keokuk at the time of the service acting as the attorney of defendant in an action before a justice of the peace; that his home was in Illinois; that he had no headquarters in Iowa; that he was assistant manager of agencies and acted for the company wherever sent out by them to investigate losses, to look up testimony in lawsuits in which the company was engaged, and at times to "look after local agents, *investigate the facts and report to the general manager*, but that he did not take risks or issue policies, etc." The court held that the service was not good, and say: "As Hambleton was not employed in any office or agency for the defendant in this State and was not appointed as agent of the defendant under section 1165 of the code (which required the appointment of an agent on whom process might be served as one of the conditions of doing business in the State), it follows that service upon him can be sustained only under section 2612 of the code, upon the ground that he was employed in the general management of the business of the defendant;" and, the court then held that he was not such agent as this section of the code prescribes.

The syllabus of the case of Mulhearn v. Press Co., 53 N. J. Law 150, is as follows: "In an action against a New York corporation publishing a newspaper there, service of summons in this State on an agent whose only connection with the company consists in receiving advertisements at the published rates, forwarding the same to the home office, receiving thence bills for the same and collecting them on commission, is not a service upon an agent of the company within the meaning of section 88 of the corporation act."

In Liblong v. Ins. Co., 82 Pa. (St.) 413, the foreign insurance company had complied with a statute regulating the business of insurance companies within the State substantially like the Tennessee statute of 1875, by giving a written stipulation agreeing that service of process should be on the insurance commissioner, &c. The process was served on an agent sent out to solicit risks. The court held that the service was not good, and said: "Now, as a reasonable conclusion from these provisions (of the statute), the company must be protected in

the proper enjoyment of its privileges. Having an actuary or agent armed with a certificate of authority and an office or place of business, it is but reasonable that a company should be served with process upon its authorized agent *for whom a stipulation* is given, at its place of business; and not that every agent in every county in the State, sent out merely to solicit risks, should be its representative."

The presence of an officer of a foreign corporation in the State of New York merely to negotiate a loan upon a mortgage of its property, does not make service upon him in an action against the company a valid one.

Clews v. Iron Co., 44 Fed. Rep. 31.
See 137 U. S. 98.

When a foreign insurance company has, in accordance with law, designated a general agent within the State on whom service of process may be made, service upon another person who is merely a soliciting agent is invalid.

Thayer v. Tyler, 10 Gray 164.
76 Alabama 441.
Oakland v. Ins. Co., 69 Md. 248.
See R. R. Co. v. Walker, 9 Lea (Tenn.) 475.

Mr. J. Brown in Maxwell v. R. R. Co., 34 Fed. Rep. 286, decided that "a person whose sole duty is to solicit travel for the railroad company he represents is not an agent upon whom process may be served, *even though he was employed by it to try to compromise the claim involved in the suit.*" Mr. Murfree, in his recent work on foreign corporations, section 210, says: "The principle has been carried even further. In a suit against a corporation which had no office or place of business within the State and had transacted no business there except that which the president *was there temporarily to settle* when he was served with process, it was held that such service conferred no jurisdiction of the company."

The author, in the next section, proceeds to show that a different rule prevails in New York, and it seems that the

opinion of the State court relies much on the New York cases.

See R. R. Co. v. Pinckney, 149 U. S. 194.
In re Hohurst, 150 U. S. 653.

In Pennoyer v. Neff, 95 U. S. 733, this court says: "Since the adoption of the fourteenth amendment to the Federal Constitution, the validity of such judgments may be directly questioned and their enforcement in the State resisted on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom the court has no jurisdiction do not constitute *due process of law*. Whatever difficulty may be experienced in giving to these terms a definition which will embrace every permissible exertion of power affecting private rights and exclude such as are forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceeding *according to those rules and principles* which have been established *in our systems of jurisprudence* for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject matter of the suit, *and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.*"

Tripp v. Street R. R. Co., 144 U. S. 126.
Scott v. McNeal, 154 U. S. 34.

Whatever variety may be found in the adjudged cases of the State courts, it may be safely affirmed that no case can be found in which this court has sustained a judgment based on the service of process on one who was not legitimately "the direct representative" of the defendant, as it is expressed by Mr. Justice Jackson in Mexican Central R. R. Co. v. Pinkney, 149 U. S. 195, 202.

As said in the opinion of this court in St. Clair v. Cox, 106 U. S. 353: "The courts of the United States only regard judgments of the State courts establishing personal demands, as having validity or as importing verity where they have

been rendered upon personal citation of the party, or, what is the same thing, *of those empowered to receive process for him*, or upon his voluntary appearance."

In the same case, 106 U. S page 359, etc., the authoritative and controlling principle is stated as follows: "Without considering whether authorizing service of a copy of a writ of attachment as a summons on some of the persons named in the statute—a member, for instance, of the foreign corporation, that is, a mere stockholder—is not a departure from the principle of natural justice mentioned in Lafayette Insurance Co. v. French, which forbids condemnation without citation, it is sufficient to observe that we are of opinion that when service is made within the State upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record—either in the application for the writ, or accompanying its service, or in the pleadings or the finding of the court—*that the corporation was engaged in business in the State.* The transaction of business by the corporation in the State, general or special, appearing, a certificate of service by the proper officer on a person who is its agent there, would, in our opinion, be sufficient *prima facie* evidence that the agent represented the company in the business. It would then be open, when the record is offered as evidence in another State, to show that the agent *stood in no representative character to the company, that his duties were limited to those of a subordinate employee, or to a particular transaction*, or that his agency had ceased when the matter in suit arose.

"In the record, a copy of which was offered in evidence in this case, there was nothing to show, so far as we can see, that the Winthrop Mining Company was engaged in business in the State when service was made on Colwell. The return of the officer, on which alone reliance was placed to sustain the jurisdiction of the State court, gave no information on the subject. It did not, therefore, appear even *prima facie* that Colwell stood *in any such representative character* to the

company as would justify the service of a copy of the writ on him."

Second.

It is next insisted for the plaintiff in error that the compliance by it with the terms of the act of 1875, by executing the power of attorney in accordance with the requirement of said act appointing irrevocably the Secretary of State its attorney for the service of process, was in the nature of *a contract* between the State and the company, making the Secretary of State the *exclusive* agent and attorney for the service of process; and that the act of 1887 arbitrarily providing that process might be served on "any agent, no matter what the character of the agency might be," impaired the obligation of the contract based on the act of 1875, and violated section 10 of Article 1 of the Constitution of the United States. That by compliance with the terms of the act of 1875 a contract was created between the State and the complying company is demonstrable.

The act itself prescribes and proposes to foreign life insurance companies the terms and conditions upon which they will be licensed to carry on business within the State of Tennessee. The State proposes to issue its licenses if the companies will pay a certain tax and comply with certain other conditions, one of which is to place themselves within the jurisdiction of the State courts by the execution of a power of attorney appointing the Secretary of State their agent for the service of legal process. No insurance company was in any manner bound by this act (and no company could obtain the privilege proposed), without a compliance with its terms and conditions. When its terms were accepted and complied with by any life insurance company, reciprocal rights and obligations were conferred on, or assumed both by the State and the company.

The State thereby became bound *by contract* to issue the license and protect the company in the enjoyment of the privileges prescribed. If it should permit itself to be sued,

the State would doubtless be liable to an action for a violation of its obligation to issue the license or to protect the company in the enjoyment of its privilege of doing business in the State. The complying company not only becomes liable to pay the tax as *a consideration* for the privilege of doing business, but, as *a further consideration*, by the execution of the power of attorney it becomes liable to the process of the State courts. To be sure, the execution of the power of attorney is in part the consideration moving from the company to the State, yet if there is a limitation of the obligation assumed by the company, it is clearly entitled to the benefit of the limitation as *a part of the contract.* An obligation assumed in a contract to pay one thousand dollars is a clear limitation of the obligation to the payment of one thousand dollars only. Under it the obligor cannot be forced to pay two thousand dollars, and the limit of one thousand is a part of the contract. Under this act the complying company was not bound to appoint two or more attorneys for the service of process, but one only, and that the Secretary of State. And when by the execution of the power of attorney it appointed *the one attorney*, the condition of the contract in this regard was fully complied with. Hence, under the authorities the appointment of the Secretary of State *was exclusive.* Judge Cooley says: "Nevertheless there may be laws which amount to propositions on the part of the State, which, if accepted by individuals, will become binding contracts."

Cooley's Const. Lim. (5th Ed.) 345.
Water Co. v. Rivers, 115 U. S. 674.
Gas Co. v. Gas Co., 115 U. S. 683.

The constitutional limitation protects *implied* as well as express contracts.

Fisk v. Jefferson, etc., 116 U. S. 131.

The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. *Any deviation from its terms is sufficient.*

Walker v. Whitehead, 16 Wall. 314.
Green v. Biddle, 8 Wheat. 84, 85.

This court in Ex parte Schollenberger, 96 U. S. 376, speaking of the effect of compliance with the terms of a statute like the one under discussion, say: "They (the insurance companies) have, in express terms, *in consideration* of a grant of the privilege of doing business in the State, *agreed* that they may be sued there; that is to say, that they may be found there for the purposes of the service of process, etc."

Railroad Co. v. Harris, 12 Wall. 81, and

See Osborne v. Insurance Co , 51 Vermont 278.

Thus the transaction involves the grant of a privilege by one party and *a consent* to terms proposed by the other party, as *the consideration of the grant.* These are the elements of a valid contract between the State and the insurance company.

It being already shown by the citation of authorities that when the Legislature prescribes the method by which foreign corporations may be sued, this method *is exclusive of all others*, the conclusion must be that the State of Tennessee by implication agreed that process in this case should be served on the Secretary of State *only*, and that this method should be exclusive. And by the extraordinary act of 1887 empowering the courts to take jurisdiction of this company by service of process upon any agent, whether the direct or proper representative of the company or not, it violated the contract already made by it. The contract characteristics of this transaction are made prominent in the power of attorney which this company executed.

Trans. p. 21.

The act of 1875 provides that the insurance commissioner shall prepare and furnish "printed forms" of certain documents prescribed thereby, and no doubt a printed form of the required power of attorney was furnished this company, and that it was formulated and furnished by the State officer. This power of attorney provides amongst other things as follows: "And the said company does hereby, *in consideration* of the privilege of doing business in said State aforesaid, *consent to and with* said State of Tennessee, for the benefit of all parties concerned, that *service of any such process* upon said

Secretary of State shall be taken and held to be valid as if served on it. * * * And the said company does hereby further *consent* that in case it, the said company above named, shall cease to transact business in the said State of Tennessee, said Secretary of State shall be considered and held *as continuing* to be attorney for it, the said company, for the purpose of process as aforesaid in any action against it, etc."

Thus in 1887 and in 1896 and since 1876 this *continuing* power of attorney stood on file in the archives of the State unimpaired and unrevoked. This is so not only by the express provisions of the act of 1875, but by the direct terms of the power of attorney itself. And it is proven that the power of attorney had never been revoked.

Trans. p. 16.

We do not insist that the State could not repeal or modify the act of 1875, but we do insist that the simple repeal of the statute did not affect the power of attorney or the vested rights of the company thereunder, which stood independent of the statute. The State court in its opinion (trans. pp. 43 and 44) committed the error of applying to this case the well established general rule that when civil proceedings depend upon a statute they fall with the statute, and the authorities for this proposition are copiously cited. It is submitted that this rule and the authorities cited have no application to this case, but that it is controlled by the clear statement of doctrine in the case of Steamship Co. v. Joliffe, 2 Wall. 457, etc. This court there say: "When a right has arisen upon a contract *or a transaction in the nature of a contract* authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, *the repeal of the statute does not affect it, or an action for its enforcement.* It has become a vested right which stands independent of the statute," etc.

Here the power of attorney had been executed and nothing remained to be done by the company. Its rights under it were vested, and the repeal of the statute out of which it arose did not affect these perfected rights, or the power of attorney itself.

The defendant relies upon the act approved May 11th, 1895, which by its 49th section repeals this act of 1875. Adversary counsel will copy this act with their argument, inasmuch as they rely upon it. It is found at page 322 of the Acts of 1895. The act of 1875 stood unrepealed for more than twenty years, during which period the statute of 1887 was enacted, the policies of insurance involved in this case were issued and the plaintiff in error had withdrawn from the State of Tennessee and had ceased to do business in the State. The act of 1895 is a new scheme for regulating and licensing the business of insurance in Tennessee, and requires insurance companies, as one condition to the doing of business, to execute a power of attorney appointing "*the Insurance Commissioner*" (instead of the Secretary of State) as their attorney for the service of process. As the plaintiff in error had at the date of the passage of this act withdrawn from the State and never did any further business in the State, it did not comply with its terms and the act was never binding on it. This statute makes no special reference to the act of 1875 or to powers of attorney executed under it. It merely by its 49th section repeals, with other statutes, "ch. 66 of the acts of 1875," which is the act of 1875 under which the power of attorney involved in this case was executed.

Inasmuch as the office of Secretary of State is a permanent one and has never been abolished, it would seem to be needless to notice the argument of the opinion of the State court based upon the hypothesis of the abolition of that office. It is presumable that inasmuch as this officer is a State officer and designated by the State itself, its Legislature would, upon the happening of the contingency of the abolition of the office, make suitable provision for the exigency. There is one paragraph of the opinion in this connection, however, which is founded upon another palpable misapprehension, and which is so misleading that it should be briefly noticed. The learned judge says: "If the argument of complainant's counsel *on this point* is sound, if the office of the Secretary of State should be abolished, this result being the act of the State, for which complainant would be in no wise responsi-

ble, then our citizens could obtain no redress for their grievances sustained at the hands of this company in their domestic courts, *even if there was an agent with full power of representation residing in each county of the State.* A position from which such a conclusion may be deduced we think necessarily unsound." This attempted *reductio ad absurdum* is based upon a clear misunderstanding of the argument of counsel and upon the erroneous conclusion drawn therefrom by the court. The reasoning of the opinion places the plaintiff in error in the bad attitude of contending through its counsel for a legal proposition in this court which leads to the absurd result that the abolition of the office of Secretary of State would leave no method of redress against this company, "*even if there was an agent with full power of representation residing in each county of the State.*" This statement of the opinion demands a brief answer and denial, in order to remove the hurtful effect which it might have if unchallenged. With great respect for the State court, it is submitted that no such consequence could ensue from the abolition of the office of Secretary of State "if there was an agent with full power of representation residing in every county of the State;" for in such case the service of process on any of such agents would, of course, be valid service *under general legal principles and independent of the statutory enactment.* This is elementary law and beyond dispute.

An agent "*with full power of representation residing in the State*" would be, *under general principles of law*, "*the direct representative of the principal*," the service on him would be "*within the scope of his agency*," and in a word he would be under all the authorities the *alter ego* of the principal. The burden not only of the argument of counsel *but of the pleadings* in the case has been from the beginning that the service of process prescribed by the act of 1887 and the actual service of process thereunder in this case was not on "an agent with full power of representation residing in the State," but upon "*any agent, no matter what character of agent such person may be*," and in truth upon a *mere employee without any power of representation* except for the investigation of the facts of a past transaction.

Of course if the *remotissima possibalia* of the abolishment of the office of Secretary of State had occurred, or even if all statutes in Tennessee for allowing foreign insurance companies to do business in the State had been repealed, and this company had *by comity* been doing business in the State, with its agents "*with full power of representation residing in every county of the State*," service of process upon any of such agents would have been valid by general law, independent of any statute on the subject. This principle is well established, and the State court in its opinion was clearly mistaken in stating that if the argument of counsel "on this point" is sound, and if the office of Secretary of State should be abolished, "our citizens could obtain no redress for their grievances sustained at the hand of this company, *even if there was an agent with full power of representation residing in every county of the State.*" That this conclusion is erroneous is shown by the authorities cited supra, embracing adjudged cases by this court.

B. M. ESTES,
Solicitor for Plaintiff in Error.

APPENDIX

CHAPTER CCXXVI.

AN ACT to subject foreign corporations to suit in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennesse*, That any corporation claiming existence under the laws of any other State, or of any country foreign to the United States found doing business in this State, shall be subject to suit here, to the same extent that corporations of this State are, by the laws thereof, liable to be sued so far as relates to any transaction had in whole or part within this State, or any cause of action arising here, but not otherwise.

SEC. 2. *Be it further enacted*, That any corporation having any transaction with persons or having any transaction concerning any property situated in this State, through any agency whatever, acting for it within the State, shall be held to be doing business here within the meaning of this act.

SEC. 3. *Be it further enacted*, That process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be; and in the absence of such an agent, it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arises took place, or if the agency through which the transaction was had be itself a corporation, then upon any agent of that corporation upon whom process might have been served if it were the defendant. The officer serving the process shall state the facts, upon whom issued, etc., in his return, and service of process so made shall be as effectual as if a corporation of this State were sued, and the process has been served as required by law; but in order that defendant corporation may also have effectual notice, it shall be the duty of the Clerk to immediately mail a copy of the process to the home office of the corporation by registered letter, the postage and fees for which shall be taxed as other costs. The Clerk shall file with the

papers in the cause a certificate of the fact of such mailing, and make a minute thereof upon the docket, and no judgment shall be taken in the case until thirty (30) days after the date of such mailing.

SEC. 4. *Be it further enacted*, That it shall be the duty of the plaintiff to lodge at the home office of the company, with any person found there, a written notice from him or his attorney, stating that such suit has been brought, accompanied by a copy of the process and the return of the officer thereon, of which fact affidavit shall be made by the person lodging the same, stating the facts and with whom the notice was lodged, or else the plaintiff or his attorney shall make an affidavit that he has been prevented from serving such notice by circumstances which should reasonably excuse giving it, which circumstances the affidavit of the plaintiff or his attorney shall particularly state; and no judgment shall be taken until one or the other of these affidavits shall be filed and the court be satisfied that the notice has been given the defendant, or that the excuse for not doing so be sufficient.

SEC. 5. *Be it further enacted*, That this act take effect from and after its passage, the general welfare requiring it.

Passed March 28th, 1887.

W. L. CLAPP,
Speaker of the House of Representatives.

Z. W. EWING,
Speaker of the Senate.

Approved March 29th, 1887.

ROBERT L. TAYLOR,
Governor.

CHAPTER LXVI.

AN ACT to regulate the business of Life Insurance in the State of Tennessee

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall not be lawful for any Life Insurance Company chartered by the United States, or any State of the United States, or any foreign government, or any agent or agents thereof, or by the laws of Tennessee, to transact any business of Life Insurance in this State, without first procuring a license therefor, from the Bureau of Insurance, and a certificate of authority for each agent employed.

SEC. 2. *Be it further enacted*, That any such company applying for such license, shall present to the Insurance Commissioner a sworn statement of the President and Secretary thereof, exhibiting:

First. The name and parent office of the company.

Second. The financial condition of such company on the 31st day of December of the year preceding the date of application.

Third. The amount of the capital stock of the company, and what part of the same has been paid in cash, and what part of the same has been paid in notes of the stockholders, together with a full exhibit of the assets and liabilities; in what the former consists, and what the latter, and when and how due.

Fourth. The income and expenditures for the year preceding.

Fifth. A copy of the charter of such company, certified by authority; and this statement shall be filed with the Insurance Commissioner.

SEC. 3. *Be it further enacted*, That it shall be the duty of the Insurance Commissioner, if the statement and exhibit of any company chartered by the United States, or any other State, or foreign government, should show it to be in a sound and solvent condition, to issue thereupon a license to transact the business of Life Insurance within the limits of the State, upon the terms and conditions set forth in this section, and those hereinafter provided, viz.: Whenever the existing or future laws of any other State of the United States shall require of the Life Insurance Companies chartered by this State, and having agencies in such other State, or of the agents thereof, any deposits of security in such State, for the protection of policyholders or otherwise, or any payment for taxes, penalties, license, fees, or otherwise, greater than the amount required for such purpose from similar companies of other States, by the existing laws of this State,

then, and in every such case, all companies of such State establishing, or having heretofore established, an agency or agencies in this State, shall be and are hereby required to make the same deposits in bonds of the State of Tennessee, for a like purpose, with the Comptroller of the Treasury of this State, or with the similar officer of the State in which the parent office of the company may exist, and to pay to the Comptroller of this State, for taxes, penalties, license and fees of all kinds, an amount equal to the amount of such charges and payments imposed by the laws of such State upon companies of this State, and the agents thereof; and all companies chartered by the United States, and other States having no laws requiring deposits of security, and by foreign governments, shall deposit with the Insurance Commissioner, to be kept in the custody of the Comptroller of the Treasury, a certificate duly attested by the proper officer, under the laws of the State or government in which such company or association is incorporated or organized, that securities to the actual value of at least one hundred thousand dollars have been deposited with him to secure the policyholders, consisting of bonds of this State, the United States, or of the State in which such company is organized, or of notes or bonds secured by mortgage on real estate, for double the amount, and stating the time and amount of each of such bonds, notes or stocks, and that he is satisfied they are worth one hundred thousand dollars.

SEC. 4. *Be it further enacted*, That no Life Insurance Company or association, organized or chartered under the laws of this State shall transact business, unless, within three months from the passage of this act, it shall have deposited with the Insurance Commissioner, for the security of its policyholders, the sworn statements of the President, Vice-President and the Secretary or Actuary of such company or association, that they have invested in the bonds of this State, or of the United States, or in notes or bonds secured by mortgage on real estate for double the amount loaned, one hundred thousand dollars, always subject to the inspection of the Insurance Commissioner at any time he may deem proper to examine them; and should the investments of any company or association doing business of Life Insurance in this State be less than one hundred thousand dollars at any time after such certificate is given, it shall be reported to the Insurance Commissioner in thirty days thereafter, under penalty of five hundred dollars for each month said report is withheld.

SEC. 5. *Be it further enacted*, That every Life Insurance Company chartered by this State, and all companies chartered by the United

States, or under foreign governments or other States of the United States, to which the reciprocal provisions of Section 10 of this Act do not apply, and to any one of them by the laws of the State in which chartered there may be no license fee or taxes required, shall pay to the Comptroller of the Treasury, in lieu of all other taxes, a tax of one and a half per cent. on gross premium receipts, payable on the first days of January and July of each year, on sworn statements of the President or Secretary of the company.

SEC. 6. *Be it further enacted*, That the Insurance Commissioner shall require annual sworn statements on the 31st day of December, or within thirty days thereafter, of each year, of every company, home and foreign, transacting Life Insurance business in this State; said statement to contain the full exhibit of facts described in Section 2 of this act, and to be made by the President and Secretary thereof.

SEC. 7. *Be it further enacted*, That any companies to which the reciprocal features of this act applies, shall pay such taxes as are now assessed by law on all Insurance Companies, and such fees as may be charged by the State in which chartered or organized.

SEC. 8. *Be it further enacted*, That every company, home and foreign, transacting the business of Life Insurance in this State, shall be required to pay, annually, the sum of fifty dollars to the Insurance Commissioner for the labor of examining and furnishing blanks for the sworn statement and exhibit thereof, and the sum of six dollars annually for each certificate of authority for every agent employed.

SEC. 9. *Be it further enacted*, That it shall be the duty of the Insurance Commissioner, whenever he shall have good reason to suspect that the affairs of any Life Insurance Company doing business in the State, whether chartered by the laws of the State or any other State, are in an unsound condition, to require of said company or association a special statement of its affairs, and if said Commissioner shall not be satisfied that the affairs of said company or association are in a safe condition, or if any three stockholders or policyholders of such company or association shall make affidavit that they believe special statement or any annual statement to be incorrect or untrue, setting forth in what respect and on what grounds they believe the same to be untrue, then the said Commissioner shall make a personal examination of the affairs of said company and cause one to be made by some disinterested person or persons, specially appointed by him for that purpose, and he or they shall have power to examine under oath, the officers or agents of any company in relation to the business of said com-

pany; and it shall be the duty of the officers and agents of any Life Insurance Company or association doing business in the State to cause their books to be opened for such inspection or examination, as may be necessary, and if it shall appear that the affairs of such company are in an unsound condition, the Commissioner shall revoke the certificate of authority granted to such company, and cause a notice to be published of such revocation, at least three times, in some newspaper in the city of Nashville, and the agent or agents of such company or association, after such notice, are required to discontinue the issuing of any new policies, or the collection of any premiums.

SEC. 10. *Be it further enacted*, That every company doing a Life Insurance business in Tennessee, whether chartered by the laws of Tennessee, or of any other State or foreign country, shall be required for the better protection of policyholders, to keep at all times, in addition to the sum necessary to reinsure all outstanding risks, calculated upon the American Experience Table of Mortality at four and a quarter per cent. on mutual or participating policies, and at six per cent. on stock or non-participating policies, the sum of one hundred thousand dollars invested in bonds, securities or mortgages (if mortgages on real estate with double the sum loaned), to be certified as safe and worth this amount by the Insurance Commissioner of the State in which the company was organized.

SEC. 11. *Be it further enacted*, That whenever the Insurance Commissioner shall become satisfied by examination or otherwise, that the standard of solvency set forth in Section 10 of this act has become impaired, it shall be his duty to suspend the company, whether home or foreign, from the transaction of any new business until said impairment has been made good, and if such impairment exists in the case of a foreign company, for six (6) months from date of first examination, then the exclusion of the company shall be final; if in case of a company organized under the laws of Tennessee, then it shall be the duty of the Insurance Commissioner to file a bill in some court of equity jurisdiction in the State, against said company, its stockholders, policyholders and creditors generally, for the purpose of winding up the affairs of such company, or of affording such protection to the interest of all as in the opinion of the court the circumstances demand.

SEC. 12. *Be it further enacted*, That any such company or association desiring to transact any such aforesaid business, by any agent or agents in this State, shall file with the Insurance Commissioner a power of attorney, authorizing the Secretary of State aforesaid to

acknowledge service of process for and in behalf of such company, at any and all times after a company has once complied with the laws of Tennessee, and been regularly admitted, even though such company may subsequently have retired from the State, or been excluded, and it is hereby made the duty of the said Secretary of State, within five days after such service of process, by any claimant, to forward by mail an exact copy of such notice to the company.

SEC. 13. *Be it further enacted*, That the Insurance Commissioner shall cause to be prepared and furnished to every company and association to which this act shall apply, printed forms of the statement herein required, and he may make such change from time to time, and in the statement required, as shall seem to him best adapted to elicit from said companies or associations a true exhibit of their condition.

SEC. 14. *Be it further enacted*, That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed: *Provided*, that nothing contained in this act, shall be so construed as to prevent the repeal or amendment of the same, or any Section thereof, by the present or any future General Assembly of this State.

SEC. 15. *Be it further enacted*, That this act take effect and be in force from and after its passage, the public welfare requiring it.

Passed March 18, 1875.

LEWIS BOND,
Speaker of the House of Representatives.
THOMAS H. PAINE,
Speaker of the Senate.

Approved March 22, 1875.

JAMES D. PORTER,
Governor.

No. 183.

Reply Brf. of Estes for C. C. & S.

Office Supreme Court U. S.
FILED
DEC 16 1898
JAMES H. McKENNEY,
Clerk.

Filed Dec. 16, 1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 183.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

LINDA Y. SPRATLEY.

Memorandum of Counsel for Plaintiff in Error in Answer to Reply Brief of Defendant in Error.

It is proper to state that plaintiff in error does not concede any of the propositions or positions assumed in the reply brief of defendant in error, but denies and challenges them all, insisting that they are untenable and unwarranted by the record.

It also insists that the authorities cited in this reply brief

do not sustain the contention of defendant in error, and that the reply brief of defendant in error in nowise meets the statement of law and fact contained in the original brief of plaintiff in error, and that the authorities cited in the reply brief in no proper sense controvert or weaken the authorities relied on by plaintiff in error.

B. M. Estes,
Francis Fentress,
Counsel for Plaintiff in Error.

No. 484. 1897.
Brf. of Turley & Wright for D. C.
Filed Mar. 11, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 484.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO., PLAINTIFF IN ERROR,

vs.

LINDA Y. SPRATLEY, DEFENDANT IN ERROR.

MOTIONS TO DISMISS OR AFFIRM, STATEMENT OF CASE, AND BRIEF FOR MRS. LINDA Y. SPRATLEY, DEFENDANT IN ERROR.

THOS. B. TURLEY,
L. E. WRIGHT,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 3-11-'98

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 484.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO., PLAINTIFF IN ERROR,

vs.

LINDA Y. SPRATLEY, DEFENDANT IN ERROR.

Motions by Defendant in Error to Dismiss or Affirm under Fifth Clause of Rule 6.

Linda Y. Spratley, the defendant in error, moves the court to dismiss the writ of error herein because there has been no return of the original writ of error and because the writ of error and citation were made returnable more than thirty days from the day of the signing of the citation.

In support of this motion the defendant in error shows that this is a case brought to this court by writ of error to the supreme court of Tennessee to reverse a decree rendered by that court in favor of defendant in error and against the plaintiff in error. The decree of the supreme court of Ten-

nessee was rendered on the 16th day of June, 1897 (Record, p. 45). The writ of error issued on the 24th day of July, 1897 (Record, p. 50). The original writ has never been returned. A copy has been substituted in its place. The citation was signed on the 24th day of July, 1897, and is returnable on the second Monday in November, 1897 (Record, p. 54). The writ of error is returnable on the second Monday in October, 1897 (Record, p. 50). The record was filed in this court on the 18th day of October, 1897.

Under the first clause of rule 8 the clerk of the court to which any writ of error may be directed is required to make return of same; and under the fifth clause of rule 8 all appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

Defendant in error submits that the writ of error herein should be dismissed because the above provisions of rule 8 have not been complied with.

And, in the event the motion to dismiss is denied, defendant in error moves the court to affirm the decree of the supreme court of Tennessee on the ground that, although the record may show that this court has jurisdiction, it is manifest the writ of error was taken for delay only.

In support of this motion and as a part thereof defendant in error submits a brief setting forth a statement of the case and the points involved, both of law and fact, with a reference to the pages of the record and the authorities bearing on each point.

THOS. B. TURLEY,

L. E. WRIGHT,

Attorneys for Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1897.

CONNECTICUT MUTUAL LIFE INSURANCE CO.
vs.
LINDA Y. SPRATLEY.
No. 484.

STATEMENT OF CASE AND BRIEF FOR DEFENDANT IN ERROR.

Statement of Case.

This was a bill filed in the chancery court of Shelby county, Tennessee, part 1, on the 10th day of October, 1896, to enjoin garnishment proceedings upon a judgment which was obtained by Mrs. Linda Y. Spratley against the complainant, The Connecticut Mutual Life Insurance Co., in the circuit court of Shelby county, Tennessee, on or about the 2d day of July, 1896, upon two policies of insurance issued by the complainant insurance company on the life of Benjamin R. Spratley, husband of the said Linda Y. Spratley, aggregating $8,000, and to vacate and set aside the judgment.

It is shown by the bill that Linda Y. Spratley had caused an execution to be issued on said judgment, and that she had had the sheriff of Shelby county, Tennessee, to garnishee various policy-holders of the complainant company residing in the State of Tennessee to answer what they owed said company.

The equity set up in the bill is that complainant company was not before the court in said circuit court proceedings, either by publication or service, and that hence the judgment was absolutely void.

The bill charges that the circuit court proceedings were prosecuted under the provisions of an act of the legislature of Tennessee, entitled "An act to subject foreign corpora-

tions to suit in this State," approved March 29, 1887, found on pages 386 *et seq.* of the act of 1887.

This act is copied at end of brief. (See page —.)

It then charges that said act of the legislature is null and void because it violates both the constitution of the State of Tennessee and the Constitution of the United States, and that hence the circuit court proceedings in which said judgment was rendered are void. The bill also charges that said judgment was rendered without regular service of process and was *coram non judice;* that complainant company was a non-resident of the State of Tennessee and had no regular office or agency in Shelby county, Tennessee, and had no office or agent in Tennessee for some years preceding the institution of the suit in the circuit court; that it had done no business in Tennessee and had no agent or office within the State for several years preceding said suit, and that the circuit court of Shelby county was without jurisdiction to entertain the suit and to render said judgment. But the equity set up as the ground upon which the right to relief is put, as will be seen from reading the whole bill, is, that said act of 1887 is unconstitutional and void. The bill will be found at pages 1 to 4 of Record. An interlocutory injunction was granted in accordance with the prayer of the bill.

See Record, p. 7.

Defendant, Linda Y. Spratley, first moved to dissolve the injunction upon the face of the bill. This motion will be found on pages 8 and 9 of the Record.

Upon argument, the motion to dissolve was overruled and disallowed.

See Record, p. 9.

Linda Y. Spratley then answered the bill. The answer puts in issue the allegations of the bill and sets up that the complainant company was amenable to suit under the act of

1887; that said act was valid and constitutional; that the proceedings in the circuit court were in all respects regular, and that complainant company was properly before the said court, and that the judgment rendered against it in her favor was in all respects a valid judgment. The answer will be found on pages 9 to 13 of Record. Proof was then taken. There is practically no dispute as to the facts.

It appears from the proof that complainant company did prosecute its business actively in the State of Tennessee from February 1, 1870, to July 1, 1894. During all this period it was seeking insurance in this State and issuing policies to its citizens. Its agency was located at Memphis, Tennessee. During said period it also complied with the laws of Tennessee regulating the manner in which foreign life insurance companies could do business in this State. It kept an agency in the city of Memphis, Tennessee, until about December, 1878, when the office of the agency was removed to Louisville, Kentucky. Mr. J. S. Carpenter, the agent who had represented it in Tennessee, continued to represent it at Louisville, and still represents it at that place.

Up to July 1, 1894, his territory as agent embraced both Kentucky and Tennessee, and he actively prosecuted the business of soliciting insurance both in Kentucky and Tennessee. All of these facts will appear from the deposition of John M. Taylor, vice-president of complainant company.

Record, pp. 14 to 19.

On the 17th of March, 1876, complainant company filed with the secretary of state of Tennessee a power of attorney authorizing him to accept service for said company in this State. A copy of said power of attorney will be found on pages 21 and 22 of Record. While the complainant was actively prosecuting its business in Tennessee, its agent, J. S. Carpenter, after 1878, made different visits to Memphis, Tennessee, for the purpose of soliciting insurance in that city. One of these visits was about December 12, 1889. On

this visit he induced Mr. Benjamin R. Spratley to apply for a policy of $5,000 in complainant company, payable to his wife, Linda Y. Spratley, and on a subsequent visit, made about the 25th of February, 1893, he procured from Benjamin R. Spratley an application for an additional policy of $3,000 in complainant company, payable to the said Linda Y. Spratley.

The applications for both these policies were taken by Carpenter in the city of Memphis, Tennessee, and the policies were delivered to Mrs. Spratley in that city.

All this appears from the deposition of S. J. York, which will be found on pages 29 to 31 of Record.

After complainant company ceased to seek new insurance in Tennessee, it continued to receive and collect premiums on the policies outstanding in this State, and to adjust death losses in the State. As appears from the garnishment proceedings (see Record, pp. 2 to 4) it still has a considerable number of policies outstanding in this State.

Benjamin R. Spratley died in February, 1896. Proofs of death were made out in Tennessee under the policies and forwarded to complainant company. Thereupon complainant company sent one of its employés, a Mr. O. N. Chaffee, in April, 1896, to Memphis to investigate the claim which was being made by Linda Y. Spratley upon the two policies issued by complainant company on her husband's life in her favor.

See deposition of S. J. York, pp. 29 to 30 of Record.
And of O. N. Chaffee, pp. 26, 27 of Record.

O. N. Chaffee was an employé of said complainant company, whose duty it was to investigate doubtful or questionable claims and to report facts to the company.

See testimony of Jno. N. Taylor, pp. 16–20 of Record.

By the terms of his written employment he was engaged "for special service in any matters which might be referred to him, with instructions, during the pleasure of the com-

plainant company, and under the directions of its executive officers, complainant company to have his entire time and services, except upon leave of absence."

Record, pp. 22, 23.

While Mr. Chaffee was in Memphis he had negotiations with Mrs. Linda Y. Spratley and her brother, S. J. York, looking to a settlement of Mrs. Spratley's claim on said two policies.

See York's testimony, pp. 29, 30 of Record.

While Chaffee was here this suit was instituted in the circuit court and service was had on him under the act of 1887. All the provisions of said act were strictly complied with, and a regular judgment by default was taken in the circuit court proceedings in favor of Linda Y. Spratley against complainant company for the full amount of said two policies and interest.

For these proceedings see Record, pp. 31 to 36.

Upon final hearing the chancellor sustained the bill and made the interlocutory injunction perpetual.

The decree of State chancery court will be found on pages 37 and 38 of the Record.

From this decree Mrs. Spratley appealed to the State supreme court. That court, at its April term, 1897, reversed the decree of the chancery court and gave judgment against the insurance company for the full amount of the policies and interest. The insurance company now brings the case to this court.

Record, pp. 45, 47.

BRIEF AND ARGUMENT.

The only question involved in this case is as to the validity of the judgment rendered in the circuit court in favor of the defendant, Linda Y. Spratley, and against the complainant company. If the judgment is void for want of service, then it will be vacated; and if the service was valid, it will be maintained. No inquiry can be made into the question of whether the defendant company had a meritorious defense to the policies if such defense had been set up in the suit on said policies. The validity of the judgment depends upon the validity of the service.

I.

We will notice first the point made in the bill as to the mistake in the name of the agent on whom the service was had.

The bill charges that the writ was served on "O. N. Chaffer," special agent, etc., but when the records of the circuit court are examined it will be found that this is an error, and that the service was had upon the agent by his proper name, O. N. Chaffee. It may be that in writing out the judgment the clerk of the circuit court made a mistake in the agent's name and wrote it "Chaffer," but such a mistake is immaterial. A misnomer of this kind, even in the service of a writ, is immaterial.

See—

Dixon *vs.* Kavanaugh, 1 Tenn., 366.
Graham *vs.* Roberts, 1 Head, 59, 60.
Robertson *vs.* Winchester, 1 Pick., 171.

II.

This brings us to a construction of chapter 226 of the Acts of 1887.

Prior to the passage of this act the legislation of Tennessee regulating the service of process on corporations, foreign or domestic, was about as follows:

We had, as we still have, the Code provisions, sections 3536 to 3539, M. & V. Code; 2831 to 2834, old Code.

These sections designate the officers upon whom service is to be made, and apply either to domestic or foreign corporations, having an office or agency and a resident local office in the county in which suit is brought.

4 Pickle, 267.

Afterwards, and beginning in 1873, acts were passed regulating the manner in which and describing the terms on which foreign life and fire insurance companies might do business in Tennessee. Chapter 23 of the Acts of 1873, section 2, required foreign fire insurance companies to file with the treasurer of the State a written instrument authorizing any agent of such company in the State to acknowledge service of process and also waiving any claim or right to transfer any case pending in the courts of Tennessee to the courts of the United States.

Chapter 66 of the Acts of 1875, section 12, required foreign life insurance companies to file with the insurance commissioner a power of attorney authorizing the secretary of state to accept service. Chapter 23 of the Acts of 1873 was repealed by chapter 47 of the Acts of 1891, and chapter 66 of the Acts of 1875, as well as chapter 47 of the Acts of 1891, were repealed by chapter 160, section 49, of the Acts of 1895.

All these repeals were express.

The suit brought by Mrs. Linda Y. Spratley in the circuit court was instituted on the 15th day of April, 1896. At

that time chapter 66 of the Acts of 1875, under which the complainant life insurance company had filed a power of attorney authorizing the secretary of state to accept service for it, had been repealed, and with the repeal the power of attorney was abrogated.

Chapter 160 of the Acts of 1895, which repeals said chapter 66 of the Acts of 1875, in section 9, contains a provision requiring every foreign insurance company, fire or life, as a prerequisite to being admitted and authorized to do business in the State of Tennessee, to constitute the insurance commissioner its attorney-in-fact to accept service.

It is not claimed that the complainant insurance company ever attempted to comply with this act of 1895. From July 1, 1894, down to the time the suit in the circuit court was brought complainant insurance company was doing a limited business in Tennessee. It had a large number of policies in this State from which it collected its premiums at stated periods, and when a death occurred it sent its agents into the State to make the necessary investigation and report upon the circumstances under which the insured party died.

Chapter 226 of the Acts of 1887 was construed by this court in the case of Tel. Co. *vs.* Turner, 4 Pickle, 266. In that case the court points out that in 9 Lea, 475, it had been held that the sections of the Code, 2831 and 2834, referred to above, did not apply to the case of a foreign corporation having no resident agent or local agent, but which was alone represented by traveling agents, not residents of this State. The court then goes on to say—

"That chapter 226 of the Acts of 1887 was passed to amend this defect, and that it did not repeal the sections of the Code mentioned above, but enlarged the Code provisions, and applied to foreign corporations having business in the State through traveling agents, and being without any resident agent or local office in the State."

Now, when the suit in the circuit court was brought, the only law under which it could be prosecuted was chapter 226 of the Acts of 1887. The Code provisions, 2831 and 2834, referred to above, did not apply, for the reason stated in Tel. Co. *vs.* Turner. The complainant company had no local office or agent in Tennessee, but was transacting such business as it had in the State through traveling agents alone. Chapter 66 of the Acts of 1875 did not apply, because it had been repealed; and chapter 166 of the Acts of 1895 was without application, because the complainant company had never complied with its terms, and was not seeking to do business under its provisions.

The first section of chapter 226 of the Acts of 1887 provided that "any foreign corporation found doing business in this State shall be subject to suit here to the same extent as domestic corporations, so far as relates to any transaction had in whole or in part within this State, or any cause of action arising here, but not otherwise." The second section provides that "any corporation having any transaction with persons, or having any transaction concerning property in this State through any agency whatever acting for it within the State, shall be held to be doing business in the State within the meaning of the act." The third section makes it clear that "any corporation which has had transactions within the State with persons or concerning property in the State is liable to suit under the act, even though it may never have had any other or subsequent transaction with persons in the State or about property in the State, for it provides that process in such cases may be served upon any agent of such corporation found within the county where the suit is brought, no matter what character of agent such person may be;" and it is further provided that if there is no such agent in the county, "it will be sufficient to serve process upon any person found in the county who represented the corporation at the time the transaction out of which the suit arose took place."

O. N. Chaffee, the person upon whom service was had in the circuit court proceedings, was clearly an agent of the company. The bill itself admits he was a special agent of the company.

See Record, pp. 2 and 3.

Vice-President Taylor testified that he was an agent to investigate all claims that were considered doubtful by the complainant company.

See Record, pp. 16, 20.

And when the process was served on him in the circuit court proceedings he was in Memphis, representing the complainant company and investigating the claim then being made by Linda Y. Spratley on the two policies which were the subject-matter of suit in the circuit court.

Section 3 of chapter 226, Acts of 1887, as already stated, allows service to be made "upon any agent, no matter what character of agent such person may be."

The suit in the circuit court was in reference to a transaction had at least in part, if not entirely, in the State of Tennessee. Complainant company was constantly having transactions with persons in the State of Tennessee in the sense of section 2 of said chapter 226, Acts of 1887. It was keeping up its insurance contracts with citizens of Tennessee, sending notices to its policy-holders in Tennessee, and receiving premiums from them, and it was sending its agents into the State of Tennessee to examine claims made against it.

The unreported case of Kosminsky *vs.* Arlington Insurance Co., decided by the supreme court of Tennessee at its April term, 1896, is instructive on the point now under consideration.

In that case the Arlington Insurance Company had issued only one policy in the State of Arkansaw. That policy was issued at the home office of the Arlington Insurance Company, in Memphis, upon the application of a broker living

in Arkansaw and was sent to the broker in Arkansaw and was delivered by said broker to the insured, who resided in that State. The broker had no authority to act for the company or to bind it by any agreement of insurance, nor had he any authority to accept any application for the company. In other words, the broker did not represent the company in any way. This was the only transaction the company ever had in the State of Arkansaw. Beyond this one transaction it never attempted to do business in that State and never complied with its laws.

The statutes of Arkansaw provide that any foreign insurance company doing business in that State can be sued there, and points out the manner in which service shall be made.

The supreme court of Tennessee held that the Arlington Insurance Company by the issuance of one policy in the State of Arkansaw was doing business therein and subject to be sued on that policy under the provisions of the Arkansaw statute.

See also on this point:

32 Fed. Rep., 276; 46 Fed. Rep., 442.
48 Fed. Rep., 205; 55 Fed. Rep., 28.
1 Fed. Rep., 471; 31 N. W., 231.

III.

We have thus argued the question of misnomer in the judgment, and also the scope and effect of the act of 1887, and whether the company was subject to suit thereunder.

But we submit that when the bill is carefully examined it will be seen that the only question raised by it is as to whether or not said act of 1887 is constitutional.

After making the point of misnomer and alleging that it had done no business in Tennessee and had no agency therein for several years prior to the institution of the suit

in the circuit court, complainant company plants its right to relief upon the allegation that the act of 1887 is violative both of the Constitution of Tennessee and of the United States, and the prayer of the bill is that said act may be declared unconstitutional and the judgment rendered in the circuit court proceedings under it be declared void. We insist, therefore, that the only question which the court can consider under complainant's bill is the question of the constitutionality or unconstitutionality of said act.

We now proceed to discuss that question.

The bill charges that said act violates article 5 and article 14 of the amendments to the Constitution of the United States, and section 17, article 1, of the constitution of Tennessee. These provisions of the Constitution of the United States and of the constitution of this State, we submit, have never by any court been considered as having any application to State statutes regulating the manner in which process may be served on foreign corporations attempting to do business within the States passing such statutes.

In enacting the statutes of 1887, Tennessee has but followed the footsteps of most of the other States. Scarcely a State in the Union can be found which is without laws of this kind on its statute book. Every State has found it necessary to enact them in order to protect its citizens against foreign corporations, who enter its territory, make contracts with its subjects, and then attempt to evade compliance with such contracts, relying on the hope that it will not be followed to the State in which it was created, and sued there. As explained by Judge Coldwell in the case of Ehrman *vs.* Teutonia Ins. Co., 1 Fed. Rep., 475:

"The leading provisions of these acts are for the protection of policy-holders."

The Supreme Court of the United States has given the same interpretation to this class of legislation. Speaking

of a statute of this kind, passed in the State of Ohio, it says:

"We find nothing in this provision either unreasonable in itself or in conflict with any principle of public law. It cannot be deemed unreasonable that the State of Ohio would endeavor to secure its citizens a remedy in their domestic forum upon this important class of contracts, made and to be performed within that State and fully subject to its laws; nor that proper means be used to compel foreign corporations transacting this business of insurance within the State, for their benefit and profit, to answer there for breach of their contracts of insurance there made and to be performed."

Lafayette Ins. Co. *vs.* French, 18 How., 404.

And in a later case the same court says—

"That if there could be no special redress short of the seat of the company in another State, the cost of the remedy would in most instances exceed the value of its fruits. The result would be to a large extent immunity from all legal responsibility."

R. R. *vs.* Harris, 12 Wall., 65.

How applicable are these words of the learned Supreme Court of the United States to our Tennessee statute and to the facts of this particular case.

Here the complainant company came into Tennessee, by its agent, solicited insurance upon the life of Mr. Spratley, made the contracts with him in Tennessee, and delivered the policies to him in Tennessee. Upon the death of Mr. Spratley, it sent its agent into Tennessee to look into the question of adjustment of these policies. A difference having arisen between complainant and Mrs. Spratley, the beneficiary, complainant instantly repudiates the Tennessee jurisdiction and insists that Mrs. Spratley follow it into the distant State of Connecticut and there prosecute her claim for her redress.

This court, we submit, in view of our legislation on this subject, will not sustain such a proposition.

The constitutional principle invoked on behalf of complainant company is not applicable to the questions now under discussion. It has been practically settled since the foundation of the Government that corporations created under the laws of one State have no absolute right to do business in another State without the consent, express or implied, of the latter State. This consent may be given on such terms as the State may think fit to impose, and these conditions are binding on the company, and effect will be given them in the courts of all States and the United States.

Lafayette Ins. Co. *vs.* French, 18 How., 404.
Paul *vs.* Virginia, 8 Wall., 168.
R. R. *vs.* Harris, 12 Wall., 65.

If the conditions imposed are too onerous for any particular company, it can abstain from doing business in the State imposing them. It has no right to go there. It has no inherent and constitutional right, so far as the questions under discussion are concerned, out of the State which gives it life. It has no right to come into any court or any tribunal and insist that a State different from that in which it is created shall be compelled to pass laws which suit its notions of right and justice.

The cases cited for complainant on this branch of the discussion when analyzed afford no support for its position. Of these cases, the first is—

Penoyer *vs.* Neff, 95 U. S., 714.

In this case a statute of Oregon, under certain circumstances, authorized personal judgment to be taken against non-resident citizens, upon publication and without any kind of service. The Supreme Court of the United States held that such a judgment was absolutely void. The case did not in any aspect involve the validity of service had

upon an agent of a non-resident corporation under the statute of a State where the service was made.

Another case cited for complainant is—

St. Clair *vs.* Cox, 106 U. S., 350.

This was a case construing a statute of Michigan providing for service upon foreign corporations. The statute in question provided for attaching property of foreign corporations by service of copy of the writ, etc., on any officer, member, clerk, or agent of such corporation within the State. An attachment was sued out by a resident of Michigan against a foreign corporation, and the sheriff returned that he had served it on one Caldwell, as the agent of said corporation. Neither the record itself nor the return of the sheriff recited or showed that the corporation was or had been engaged in any kind of business in Michigan, or that the person upon whom the service was had was at the time acting as the agent of the corporation in the State of Michigan and representing it in connection with business it had there. For these defects in the record the service was held bad, and the judgment entered therein was set aside.

The record in our case is free from these defects. The declaration, the return of the sheriff, and the judgment entered in the circuit court, all show that the complainant was doing business in Tennessee; that the policies sued on were issued in Tennessee, and that Chaffee, the agent, was representing the company in Tennessee in connection with these very policies at the time the service was had.

If the Michigan record had contained the same averments and recitals as our record, the case of St. Clair *vs.* Cox would have been decided very differently.

But when the opinion of the court, as delivered by Judge Fields, is looked into, it will be seen that it is strongly in our favor. We quote for the benefit of the court certain portions of said opinion. On page 356 this language is used:

"A corporation of one State cannot do business in another State without the latter's consent, express or implied, and that consent may be accompanied with such conditions as it may think proper to impose. As said by this court in La Fayette Ins. Co. *vs.* French, 'These conditions must be deemed valid and effectual by the other States and by this court, provided they are not repugnant to the Constitution or laws of the United States or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity of defense,'" citing—

18 How., 404, 407.

Paul *vs.* Virginia, 8 Wall., 168.

In the case at bar there is certainly nothing inconsistent with "that principle of natural justice which forbids condemnation without opportunity for defense."

The agent of complainant was notified, and complainant itself was also given full information of the suit. Copy of the writ and return were sent to its home office. It is not claimed, and cannot be claimed, that it did not have full opportunity to make its defense in the circuit court. It chose deliberately to risk its case upon the supposed invalidity of the Tennessee statute of 1887. This statute, we may pause here to notice, is more careful to comply with the "principle of natural justice" referred to above than the statutes of almost any other State. It does not stop with the service upon the agent, but requires both the clerk of the court and the attorneys for the plaintiff to send full information of the suit to the defendant corporation at its home office. It would be impossible to conceive a statute containing greater safeguards against any violation of the principle of natural justice which demands that every party when sued should have his day in court and full opportunity to present his defense.

But, recurring to the opinion of the court in said case of

St. Clair *vs.* Cox, and further quoting from page 356, we find this language:

"The State can therefore impose as a condition upon which foreign corporations shall be permitted to do business within her limits that it shall stipulate that in any litigation arising out of its transactions in the State it will accept as sufficient the service of process on its agents or person specially designated, and the conditions would be eminently fit and just, and such condition and stipulation may be implied as well as expressed. If a State permits a foreign corporation to do business within her limits and at the same time provides that in suits against it for business there done process shall be served upon its agents, the provision is to be deemed a condition of permission, *and corporations that subsequently do business in the State are to be deemed to assent to such condition as fully as though they had specially authorized their agents to receive service of process.*"

How applicable again is this doctrine to our case.

The Tennessee statute of 1887 provides for service on agents found in Tennessee in suits against foreign corporations for business here done. This statute was passed long before complainant came into Tennessee and issued its policies upon the life of Benjamin R. Spratley. It thereby assented to the conditions of the act of 1887 as fully as though it had specially authorized any agent it afterwards sent into Tennessee to receive service of process in any suit growing out of these Spratley policies.

If the agent, Chaffee, had been traveling through Tennessee on his private business and not in the character of agent of complainant, then service could not have been had upon him; but the bill admits that he was here as the agent of complainant, upon complainant's business. It is true the bill says it was special business, but still it was the business of complainant. The circuit court record showed that he was here representing complainant in connection with the policies sued on.

Railroad Co. *vs.* Pinkey, 149 U. S., 194, went off on the

ground that the person served was not really the agent of the corporation sued; but we again repeat that the person here served was the agent of the corporation and was engaged in its business at the time.

The case of the U. S. *vs.* Am. Bell Tel. Co., 29 Fed. Rep., p. 17 *et seq.*, is another case cited for complainant. This case grew out of an Ohio statute which allows service on the managing agent in Ohio of any foreign corporation. In the record there presented it did not appear that the person served was the managing agent of defendant corporation—indeed, the court found that he was not an agent at all. The three conditions laid down by Judge Jackson in the opinion in this case, and which are cited in the brief for complainant, are shown to exist in the record in the case at bar. That record recites, first, that complainant was doing business in Tennessee; second, that it had an agent who was here at the time service was had, and who was representing it at that time in this State; third, it shows the existence of the local law making the corporation amenable to suit in this State. When the record of the circuit court and the bill filed in the case, together with the garnishments which were issued, are taken into consideration, it shows that complainant had a very large business in Tennessee. The existence of probably fifteen or twenty policies in this State is disclosed. Thus the complainant is shown to have outstanding running policies in existence in this State, and to be constantly collecting money from the citizens in this State. How could there be a clearer case of doing business?

REPLY TO CERTAIN POINTS RELIED ON BY THE INSURANCE COMPANY IN THE COURTS BELOW.

I.

Counsel for the insurance company denied the proposition that chapter 66 of Acts of 1875 was repealed by section 49, chapter 160, of the Acts of 1895. He said that the act of 1875 contains no provision for service of process on the secretary of state as the agent of foreign insurance companies complying with said act; that it only authorizes the secretary of state to acknowledge service for such companies; hence, he says, that the repeal of the act of 1875 involves no question of process.

Certainly, the act of 1895 repeals all of chapter 66 of the Acts of 1875 in express terms.

The question then arises, What is the effect of this repeal? There is much learning in the books upon the general question of the effect of the repeal of statutes. We have been unable, however, to find up to this time any case the facts of which are like those in the case at bar; but much light may be gained by analogy from an investigation of certain principles which seem to be well established by the decided cases and by the views of the best text-writers.

Acts of the legislature like those under consideration are intended to give jurisdiction to the local courts and to prescribe the methods by which a certain class of parties, viz., foreign corporations, can be brought before them. They are acts regulating civil proceedings and conferring civil jurisdiction.

The principle seems to be thoroughly established, almost without a break in the authorities, that where civil proceedings or jurisdictions in civil cases depend upon a statute they fall within the repeal of that statute.

See Enlich on Interpretation of Statutes, sec. 479 and notes.

Thus where a commissioner to whom a case was referred under a statute made his report after the repeal of the statute, it was held that the court could not act on the report; and so, too, where a foreign attachment was issued under an act and the act was repealed before the attachment proceedings were finally concluded, it was held that the proceedings were vacated by the repeal of the act. See—

North Cabal St. *vs.* Road, 10 Watts (Pa.), 351.
State *vs.* Brookover, 22 W. Va., 214.
Stephenson *vs.* Doe, 8 Blackford (Ind.), 508.
Rex *vs.* Morris, 2 B. and Ab., 441.

A verdict was rendered for one shilling. Under an act then in existence the presiding judge could, by granting a certificate, deprive plaintiff getting such a verdict of all costs. The certificate was not granted until after the act was repealed. Held, that the certificate came too late.

Morgan *vs.* Thorn, 7 M and W., 400.

An act gave the right to acquire a mechanic's lien. Proceedings to fix the lien were instituted, but before they were completed the act was repealed. Held, that the repeal of the act destroyed the proceedings and no lien could be acquired.

So, too, an act authorizing a mortgagee to redeem within the year from date of sale. Before the expiration of the year the act was repealed. Held, that the right to redeem was lost.

An act authorized the opening of streets, directed the damages to be paid by the owners of lots benefited by the opening, and gave a remedy to enforce the collection of such damages. Certain streets were opened under this act, and proceedings were instituted against the owners of lots benefited thereby to collect damages. Before said proceedings were consummated by final judgment the act was repealed.

Held, that the right to recover damages, as well as the obligation to pay same, fell with the act.

Enlich on Interpretation of Statutes, sec 480.
Bailey *vs.* Mason, 4 Minn., 546.
Butler *vs.* Palmer, 1 Hill, N. Y., 324.
Hampton *vs.* Commonwealth, 10 Pa. Stat, 329.

The repeal of an act which authorizes a course of proceedings by public officials invalidates all unfinished proceedings under said act, no matter how near they may be to completion at the time of repeal.

Williams *vs.* Lincoln Co., 35 Me., 345.
Tivey *vs.* People, 8 Mich., 128.
Lamb *vs.* Schotter, 54 Cal., 319.
Hampton *vs.* Commonwealth, 19 Pa. Stat., 329.

The repeal of a statute abrogates it as completely as if it had never existed, and all actions and proceedings pending under it fall with the repeal.

Anding *vs.* Levy, 57 Miss., 58.

The act of 1895, in addition to expressly repealing the act of 1875, provides a different method for acquiring jurisdiction over foreign insurance companies doing business in this State. The act of 1875, as already stated, required foreign life insurance companies to file with the insurance commissioner a power of attorney authorizing the secretary of state to accept service. The act of 1895, pp. 326 and 327, requires every foreign insurance company to appoint the insurance commissioner its agent, upon whom all lawful process may be served. In the repealed act the secretary of state was to be authorized to accept service; in the repealing act the insurance commissioner is to be constituted an agent upon whom process may be served.

The two acts point out different officers to act as agents.

In the one act the officer is to accept service; in the other, process is to be served upon him. We do not think this latter difference very material, but still it is a distinction in favor of the position for which we contend.

Counsel for appellee, as shown, seems to think the distinction an important one. We repeat again, whether important or not, its effect, so far as it goes, operates in our favor, for it requires *some affirmative act on the part of the official to accept service.* It is a duty which he must affirmatively perform, while process may be served on an official without his doing any act of any kind.

Now, in the light of the authorities cited above, since the repeal of the act of 1875, where can the secretary of state find any law requiring or compelling him to accept service for any foreign life insurance company? The authority filed with the insurance commissioner by appellee, under the act of 1875, was not and could not operate as a personal authority to the individual filling the office of secretary of state when this suit was brought. Under the act of 1875 when the written authority was filed by the foreign life insurance company, then it became the official duty of the secretary of state to accept service and notify the company in whose behalf he accepted it of the existence of the suit.

These were official acts, made incumbent upon him by the statute itself. He was bound to perform these acts, not by reason of the authority filed with him, but because of the express command of the statute. With the statute repealed, there is no duty of any kind imposed upon him. As shown above, the repeal of a statute authorizing or directing a course of proceedings by a public official even destroys the power to complete and carry out the proceedings which were instituted before the repeal of the act.

It is said that when appellee filed its power of attorney under the act of 1875 a contract was thereby consummated and completed between it and the State, and the State had

no power thereafterward to disregard this contract and provide that service should be had upon another person as agent of appellee.

This, it seems to us, is a very remarkable doctrine. It is certainly not supported by any of the authorities cited for it in appellee's brief. It is the first time we have ever heard the theory advanced that these statutes providing the manner in which service may be had upon foreign corporations constitute contracts between the State and the corporations.

If this proposition were sound, then the State could not require any foreign life insurance company which had complied with the act of 1875 to comply with any new act which the legislature might see fit to pass regulating the manner in which such companies might thereafter do business in this State.

Take the act of 1895. According to this argument, no company, life or fire, which had complied with the acts of 1873 and 1875 could be required to comply with this act. We respectfully submit that such a proposition cannot be sustained.

The State has the same right to change the terms and conditions upon which it allows foreign insurance companies to do business within its limits as it had to originally impose terms and conditions upon such companies. Suppose the office of the secretary of state were abolished, what would be the result? If the act of 1875 constitutes a contract between the companies complying with it and the State, then the people of the State could not abolish the office of secretary of state, so far as said companies were concerned, nor could the State itself require of the companies which had complied with said act to designate any new agent for service of process. The fact that the act of 1875 required the companies complying with it to consent that in case they ceased to transact business in the State the secretary of state should be considered as a continuing agent to accept service does not affect the position for which we contend, because, as

shown by the authorities above, when that act was repealed every part of it fell, and it was abrogated as completely as if it had never existed. This continuing authority of the secretary of state to accept service depended entirely upon the act itself. No company or individual could impose duties on the secretary of state. Duties can only be imposed upon him by law, and when this suit was brought the legislation on this subject stood just as if the act of 1875 never had been passed. But even if the repeal of the act of 1875 did not revoke or annul the power of attorney and the secretary of state continued to be the agent of plaintiff in error, yet it would not follow, as pointed out by the supreme court of Tennessee in its opinion in this case (Record, p. 44), that the service in this case was void. The only result would be that defendant in error might have proceeded in either of two ways—one by service on the secretary of state, the other by service under the act of 1887.

II

Counsel for the insurance company, the plaintiff in error, insisted that this case was not embraced within the terms and intent of the act of 1887. We have already argued that this point cannot be raised under the pleadings. If the court, however, should be of the opinion that it is embraced in the pleadings, then in reply to what is said for the insurance company we submit the following considerations:

Counsel for the insurance company said that the history and intensive language of the act of 1887 clearly showed that its provisions were intended to catch a class who were defrauding the State. He said it was to catch a class doing business surreptitiously in the State and to hold them by service of process.

Now, when the present statutes regulating the manner in which the business of life insurance is to be conducted in

this State are examined, it will be seen that this insurance company, the plaintiff in error, is enjoying the profits of contracts made in this State under the protection of its laws, without bearing the burdens which are imposed by the State upon the business out of which those contracts grew.

Section 19, chapter 160, of the Acts of 1895 requires every foreign insurance company to report, under oath, the amount of gross premiums received in this State within the six months preceding the first of January and July, or since the last return of such premiums were made by such company, and further requires it at the same time to pay into the treasury of the State the sum of $2.50 upon each $100 of said gross premiums so ascertained.

Now, plaintiff in error has a large number of outstanding policies in this State which it obtained under the protection of the laws of this State. Every life insurance company which has complied with the terms of chapter 160 of the Acts of 1895 pays this $2.50 per hundred on all premiums it receives in this State, yet plaintiff in error collects its premiums and refuses to pay this tax. This is shown in the correspondence between appellee and the insurance department, all of which will be found in the record. The result is plaintiff in error, as far as it can, according to its own admissions, has withdrawn the authority it gave authorizing the secretary of state to accept service of process. The law requiring the secretary of state, under such authority, to accept service has been repealed. Appellee does not seek to do new business in Tennessee, it says, but quietly reaps the benefit of all the business heretofore done without paying the revenue which is levied by the State upon exactly the same kind of business done by other companies, and in this attitude it says it cannot be sued on a policy issued in this State in the courts of this State.

In the Kosminsky case already cited the sending of one policy of insurance to a citizen of Arkansaw by a Tennessee insurance company was held by the court to be doing busi-

ness in the State of Arkansaw. So, too, a single act making one loan of money, and taking a mortgage to secure it by a foreign company engaged in the business of lending money, was held to be doing business within the provisions of the Alabama constitution prohibiting foreign corporations from doing any business in the State without having at least one place of business and an authorized agent.

Farrior *vs.* New England Mortgage Co., 88 Ala., 275; 7 So. Reporter, 200.

Christian *vs.* Am. Freehold Loan and Mortgage Co., 89 Ala., 198; 7 So. Reporter, 427.

Ginn *vs.* New England Mortgage Co., 92 Ala., 135; 8 So. Rep., 388.

It seems to us that the system adopted by our State with reference to foreign corporations is both wise and complete.

The act of 1887 is broad in its terms and may embrace every kind of foreign corporation found doing any business in Tennessee. Then, from time to time there have been acts with reference to particular corporations. If these latter acts are not complied with, then the non-complying companies at which they are directed would fall within the scope of the act of 1887.

Again, if any of these acts were repealed, the particular class of corporations to which they applied, while in existence, would also fall within the scope of the act of 1887. So thus it is the courts of Tennessee under these acts can be invoked for relief against foreign corporations in all controversies or suits growing out of contracts made or business done within the State.

III.

Counsel for the insurance company, plaintiff in error, in that portion of his brief which was devoted to showing that the act of 1887 was unconstitutional, insisted that Chaffee, upon whom the writ was served in the circuit court proceedings, was not an agent of appellee upon whom legal process could be served. He said further that no State can arbitrarily provide for the service of process upon such an agent as Chaffee was, or, to quote his own language, "upon any agent, no matter what character of agent he may be."

We have in our main brief noticed most of the authorities cited for appellee on this point. The general rule is that the State itself can select the kind and character of agent upon whom process may be served. The only limitation is that such selection must not encroach upon that principle of natural justice which requires notice of suit to a party before he can be bound by it.

Mr. Murfree, in his late work on Foreign Corporations, section 215, says:

"There is a great variety among the statutory provisions which designate the character of the agent of the foreign company upon whom service of process is to be made, and the determination of the question as to the sufficiency of the service will necessarily depend upon the language of the particular statute and the facts of the particular case. The purpose of such provisions being to insure the giving of due notice to the corporation, that idea is given prominence in all the decisions interpreting them; consequently the general rule, as far as there can be said to be any, in such cases is that if the person served sustain sufficient character and rank to render it reasonably certain that the corporation would be apprised of the service, the requirement of the statute is answered. Under the New York Code authorizing service in certain circumstances on the cashier, service on one who receives money for goods sold by the company in the State has been held sufficient."

McCulloh *vs.* Paillard, 14 N. Y. Supp., 491.

Service on a section foreman of a railroad has been held good under a statute authorizing service on a local superintendent of repairs.

St. Louis R. R. *vs.* Deford, 38 Kan., 299.

And service on a conductor is good under a statute authorizing service on a special agent of a railroad company.

New Albany R. R. *vs.* Grooms, 9 Ind., 243.

National R. R. Co. *vs.* Tilton, 12 Ind., 3.

And service upon a subagent of the general agent has been held sufficient.

Burgess *vs.* Aultman, 80 Wis., 292.

Certainly Chaffee's relations to plaintiff in error were such as to insure that appellee would have notice of the suit. He was the agent to investigate the nature and character of the claim made by the defendant in error. He not only had to investigate, but he had to report, and it was his duty to report everything that occurred while he was making the investigation. Certainly he would have been negligent in the performance of his duties if he had failed to inform plaintiff in error that he had been served with process on its behalf. But the statute itself does not rest with the probability of notice reaching the company through its agent; it meets the requirement of natural justice referred to by Judge Field in St. Clair *vs.* Cox, *supra*, by requiring the clerk of the court as well as the attorney of the plaintiff to send written notice to the company sued of the pendency of the suit.

Amongst other cases cited for appellee on this branch of the discussion is—

Phillips *vs.* Ins. Co., 62 Iowa, 633.

As quoted in the brief for appellee, this was a case where the insurance company, under the statute, had appointed an agent on whom process might be served, and the service was had on another agent not contemplated by the statute.

Certainly this is a very different case from the one at bar. Here the service was had on the proper agent, and actual notice was brought home to appellee.

The case of R. R. *vs.* Walker, 9 Lea, 475, gives but little aid in determining the questions here involved. The service was held bad in that case because it was not made upon an officer or agent designated by the statutes then in existence.

THOMAS B. TURLEY,
L. E. WRIGHT,
For Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

No. 183.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY

vs.

LINDA Y. SPRATLEY.

Reply to Brief for Plaintiff in Error on the Merits of the Case.

One of the Federal questions relied on by plaintiff in error is stated in its brief as follows:

"While plaintiff in error was doing business in the State of Tennessee, from 1870 to 1894, it strictly complied with the statutory laws of the State, and especially with the requirement and condition of section 12 of the act of March 22, 1875, which is entitled 'An act to regulate the business of life insurance in the State of Tennessee.' It was claimed that the compliance with this condition of the law and the execution of the power of attorney authorizing the secretary of the State to acknowledge service of process (which power

of attorney should be irrevocable, 'even though the company should retire from the State or be excluded therefrom') constituted a contract between the company and the State to the effect that the former should be brought into the courts of the State through the secretary of state as its attorney-in-fact, and that the subsequent act of 1887, subjecting it to suit by service of process on any agent, 'no matter what character of agent such person may be,' so that it might be sued by service of process on some person who was not in any sense its representative, impaired the obligation of the contract and violated section 10 of article 1 of the Constitution of the United States."

See page 7 of brief of plaintiff in error.

Now, it must appear in the record in direct and positive terms or by necessary intendment that the Federal question relied on was raised and decided in the court below, in order to bring the case within the twenty-fifth section of the judiciary act.

Furman *vs.* Nichol, 8 Wall., 44.
Crowell *vs.* Randall, 10 Pet., 368.
Armstrong *vs.* Treasurer, etc., 16 Pet., 281.
Beer Co. *vs.* Mass., 97 U. S., 25.

The record in a chancery case consists of the pleadings and decrees. The Federal question stated above does not appear in the record of this case, either in direct or positive terms or by necessary intendment.

If it were true that a compliance by plaintiff in error with section 12 of the act of March 22, 1875, and the execution of the power of attorney thereunder constituted a contract between it and the State of Tennessee (which we deny),

it should have been made to appear somewhere in the pleadings of the plaintiff in error, either in direct terms or by necessary intendment, that it had complied with said section and had executed and delivered such power of attorney. Nothing of the kind appears either in the bill of the plaintiff in error or elsewhere in the record in this case. It appears only in the proof.

In Tennessee the decree must conform to the case made in the bill, and if based alone on the proof it is void.

Cunningham *vs.* Wood, 4 Hum., 417.
Scott *vs.* Fowlkes, 12 Heisk., 700.
Furman *vs.* North, 4 Bax., 296.
Merriman *vs.* Lacefield, 4 Heisk., 209.

It thus results that the supreme court of Tennessee in this particular case was without jurisdiction to determine said Federal question.

The opinion of the State supreme court and the certificate of the presiding judge is not conclusive on this question.

Leeper *vs.* Texas, 139 U. S., 462.

The plaintiff in error states the contract feature of its case as follows:

"The act itself prescribes and proposes to foreign life insurance companies the terms and conditions upon which they will be licensed to carry on business within the State of Tennessee. The State proposes to issue its licenses if the companies will pay a certain tax and comply with certain other conditions, one of which is to place themselves within the jurisdiction of the State courts by the execution of a

power of attorney appointing the secretary of state their agent for the service of legal process. No insurance company was in any manner bound by this act (and no company could obtain the privilege proposed) without a compliance with its terms and conditions. When its terms were accepted and complied with by any life insurance company, reciprocal rights and obligations were conferred on or assumed both by the State and the company. The State thereby became bound by *contract* to issue the license and protect the company in the enjoyment of the privileges prescribed. If it should permit itself to be sued, the State would doubtless be liable to an action for a violation of its obligation to issue the license or to protect the company in the enjoyment of its privilege of doing business in the State. The complying company not only becomes liable to pay the tax as a *consideration* for the privilege of doing business, but as a *further consideration*, by the execution of the power of attorney it becomes liable to the process of the State courts" (pages 20 and 21, brief of plaintiff in error).

Now, if this arrangement between a life insurance company and the State of Tennessee under said act of 1875 constitutes a contract, then the contract feature embraces all the terms and conditions prescribed in said act. Indeed, the plaintiff in error insists that when a company complies with the terms of the statute the State becomes bound by contract to issue the license, and if it should permit itself to be sued it would be liable for an action for violation of its obligation to issue the license.

On the theory of plaintiff in error, the question arises,

When does this contract end? Can it be determined in any other way than by consent of the two parties to it?

The act itself contains no terms of limitation and does not prescribe any time within which the contract shall terminate, if it be a contract.

The plaintiff in error insists (see page 23 of its brief) that upon the execution of the power of attorney nothing further remained to be done by it, and its rights under the act were vested, and that the repeal of the act did not affect these perfected rights or the power of attorney itself. In other words, plaintiff in error here contends that the State is powerless to change the agent designated in the power of attorney to accept service for it.

If the State cannot make such change, then can it change any other term or condition prescribed in the act?

Could it require a different tax to be paid or different reports to be made? Could the State refuse to renew a license? Plaintiff in error says not.

The logical conclusion of the position taken by plaintiff in error is, that the State is bound to allow all life insurance companies who have complied with the act of 1875 to do business within its borders, upon the terms prescribed in said act, as long as they choose, no matter what changes it it may make in its policy on this general subject. Certainly such a result could not be tolerated.

But when plaintiff in error comes to criticise the opinion of the supreme court of Tennessee on the point now under consideration, it admits that if the office of secretary of state were abolished, then service upon any general agent which it might have in the State of Tennessee would be valid (page 25 of its brief).

But if plaintiff in error has a contract with the State by which the secretary of state was the exclusive or only agent upon which service could be had in order to bind it, how could the State, by a subsequent law, alter that contract so as to make service on some other agent valid and legal?

If the State has such power, as we contend it has, then it has power to provide for the additional service prescribed in the act of 1887.

Plaintiff in error cites several cases for the position that the method of acquiring jurisdiction prescribed by the statute and the power of attorney is exclusive.

The first case is Oakland *vs.* Ins. Co., 69 Md. Reps., 248. In this case it appears that in 1868 the legislature of Maryland passed a statute providing for service of process on the agents of all foreign corporations. Then, in 1878, an act was passed embracing the whole subject-matter of regulating the business of foreign insurance companies and the service of process on their agents in the State of Maryland. The court held that this last act was exclusive as to foreign insurance companies.

In the case at bar, the supreme court of Tennessee has decided that the plaintiff in error was amenable to the operation of both the act of 1887 and the act of 1875. This is not a Federal question, and the decision of the supreme court of the State is conclusive upon it.

Plaintiff in error admits (see pages 4 and 5 of its brief) that "the decision of the State supreme court, that a proper construction of the act of 1887 embraced this case, is not and cannot be controverted here."

The next three cases are Liblong *vs.* Kansas Fire Ins. Co.,

82 Pa. St., 413; Thayer *vs.* Tyler, 10 Gray, 164, and Tusten *vs.* Eastland, 89 Mo., 13.

All these cases involved the construction of but one statute—that is to say, the several States in which they were decided had but one statute prescribing the form of service upon foreign insurance companies. The several cases respectively hold that the provisions of such statutes must be substantially complied with. The question of one statute being exclusive of another, where two existed, did not arise.

Other cases are cited by plaintiff in error as to the character of agent upon whom service can be had.

One is Phillips *vs.* Ins. Co., 62 Iowa, 633.

In this case it appeared that the Iowa code was as follows:

Section 1165 required life insurance companies to appoint an attorney or agent in each county of the State in *which the company had an agency.* Section 2613 provided that as to all corporations, except municipal corporations, service might be made on any trustee or officer thereof, or any agent employed in the general management of its business, or on any one of the known or acting officers of the corporation.

Section 2613 provided that when any company, corporation, or individual had, for the transaction of business, an agency in any county other than that in which the principal resided, service might be had on that agent in suits growing out of the business of that office or agency.

The service was had in said case on one Hambleton, as assistant manager of agencies and general agent of the defendant insurance company, and it was made in Keokuk, in

the county of Lee. It appeared, further, first, that the defendant was a foreign insurance company, and that it had only one agent in Iowa designated under the statute, and he was located in the city of Des Moines; second, that Hambleton, when service was had, was in Keokuk representing the defendant company in a case before a justice of the peace; that he was assistant manager of the company and acted for the company when sent out to investigate losses, look up testimony, and look after local agencies, but that he and those filling his place never acted in States *where the company had an agent or agents appointed under State statutes.*

The court held that the service on Hambleton could not be sustained under section 1165, because he was not employed in any office or agency of defendant in Iowa and was not appointed an agent under said section, and that it could not be sustained under section 2612, because he had no authority to act for the defendant in Iowa at all and was not the general manager of its business in that State as contemplated by said section.

It will thus be seen that under section 1165 a foreign insurance company was only bound to designate agents in those counties in which it had an agency; and it will be further seen that the defendant company had no agency in Lee county and only one agency in the State, which was located in Des Moines, where an agent was legally and regularly appointed under the statute.

Of course, then, the service on Hambleton could not be sustained by this section, nor could it be sustained by the other section for the reason given by the court, that he did not represent the company at all in the State of Iowa.

The case therefore has no application to the case at bar.

In the case of Farmers' Ins. Co. *vs.* Higgsmith, 44 Iowa, 344, it was held that an agent to solicit and forward risks from that State could be served with process. If so, why, then, cannot an agent to investigate and settle losses so be served?

The case of Mulhearn *vs.* Press Co., 53 N. J. Law, 150, is a case construing the statute of New Jersey regulating the manner of service upon foreign corporations. The terms of the statute are not given or explained anywhere in the case. Inasmuch as we have not access to this statute, it is impossible for us to tell what the case really decides.

The case of The Equitable Life Ins. Co. *vs.* Vogel, 76 Ala., 441, simply decides the well-established principle that a corporation has its domicile as to debts contracted by it in the State in which it is chartered, but may subject itself to suit in another suit by appointing an agent there upon whom, as a statutory condition to do business in said State, process may be legally served.

Maxwell *vs.* R. R. Co., 34 Fed. Rep., 286, was a suit instituted in the State of Michigan. The Michigan statute gave jurisdiction over foreign corporations only where *the cause of action arose within that State.* The court found that the cause of action in said case arose within the State of Kansas and not within the State of Michigan, and therefore there was no local law making the defendant corporation amenable to suit in the State of Michigan.

For this position it cited the opinion of Judge Jackson in The United States *vs.* Telephone Co., 29 Fed. Rep., 17.

On this general subject see Block *vs.* R. R. Co., 21 Fed. Rep., 529.

Plaintiff in error cites Osburn *vs.* Ins. Co., 51 Vt., 278.

The court in this cause sustains the Vermont statute requiring agents for service to be designated before foreign insurance companies can do business in that State.

It says the statute is for the protection of the citizens of that State. It does not hold that a compliance with the statute makes a contract between the State and the insurance company, but says that when a foreign insurance company enters into a contract in Vermont, with a citizen of that State, it consents to be served under the statute, *so far as said contract is concerned* (p. 282).

Plaintiff in error quotes what the supreme court of Tennessee says in this case in approval of a portion of the opinion of the court of appeals of New York, in the case of Earl *vs.* Terre Haute Car Manufacturing Co. (p. 41 of Record), and then adds that the supreme court of Tennessee seems to assume that the test of valid service of process is, whether the notice actually reaches the defendant; and insists that this leads to the doctrine that service of process on a defendant outside of the State in which the suit was brought is good.

It will be seen by examining the opinion of the supreme court of Tennessee in this case that the criticism thus passed on it by the plaintiff in error is wholly unwarranted.

The court in that portion of its opinion quoted by plaintiff in error was simply laying down the rule that the service required by State statutes like those now under consideration should be such as might reasonably be expected to give actual notice to the defendant. It recognized, as every court does, that service must be first upon some agent or representative of the foreign corporation within the State

where the suit is brought, for the reason that process from the tribunals of one State cannot run into another State and summon parties there domiciled to leave its territory and respond to proceedings against them.

Pennoyer *vs.* Neff, 95 U. S., 727.

But, having once provided for reasonable service on an agent within the State, it may well be further provided that notice or informations shall be directly sent to the home office of the foreign defendant. This is but in accord with natural justice.

The case of Tripp *vs.* Railroad Co., 144 U. S., 127, is a case where it was attempted to serve a citation of a writ of error from the Supreme Court of the United States to the supreme court of a State by depositing a copy of the same in the post-office, addressed to the attorney of the defendant in error at his usual abode. The court held that the statute of the United States regulating practice in writs of error provided for personal service alone, and hence that the attempted service was void. It has no application to the case at bar.

The case of Fitzgerald *vs.* Fitzgerald, 137 U. S., page 98, simply holds that when a foreign corporation is not doing business in the State and has no officer there actually transacting business and representing it, it cannot be said that it is within the State so that service can be made upon it.

The case of Scott *vs.* McNeal, 154 U. S., 34, decides the single question that a probate court has no jurisdiction to appoint an administrator on the estate of a living person.

All through the brief of plaintiff in error runs the theory that statutes of the kind under discussion must designate

some agent of foreign corporations who represents them in reference to their litigation, and this on the idea that notice to the agent in order to bind the principal must be within the scope of the agent's authority. (See pages 12 and 15 of brief of plaintiff in error.)

But the principles are not analogous. Any actual or real agent of a foreign corporation may be designated for service of process. Thus, most of the statutes provide that where no other agent can be found within the State, then service may be had upon the person who last represented the company therein. Provisions of this kind have always been upheld.

This court *In re* Hohorst held that it was a sufficient service upon a foreign steamship company, which had within the district no officer and no agent expressly authorized to accept service, to serve it upon its financial agent, at his office, the same being the office at which the financial affairs of the company in this country were transacted, and this although the docks of the company where its steamships landed and took on and discharged cargoes, and its office for the transaction of matters connected with its actual industrial operations in this country, were in another district.

T. B. Turley,
Luke E. Wright,
Counsel for Defendant in Error.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY *v.* SPRATLEY.

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

No. 183. Submitted January 3, 1899. — Decided January 30, 1899.

In a suit in a state court against a foreign corporation where no property of the corporation is within the State, and the judgment sought is a personal one, it is material to ascertain whether the corporation is doing

Opinion of the Court.

business within the State; and if so, the service of process must be upon some agent in the State so far representing it that he may properly be held in law its agent to receive such process in its behalf.

A foreign insurance company which has been doing business within a State through its agents does not cease to do business therein when it withdraws its agent and ceases to obtain or ask for new risks or obtain new policies, while, at the same time, its old policies continue in force, and the premiums thereon are paid by the policyholders to an agent residing in another State, who was once the agent in the State where the policyholders reside.

On the facts stated in the opinion of the court, it is held that the law implies, from the appointment and authority of the agent of the plaintiff in error, the power to receive in Tennessee service of process against the company.

If it appears that there is a law of the State in respect to the service of process upon foreign corporations, and that the character of an agency of a foreign corporation is such as to render it fair, reasonable and just to imply an authority on the part of the agent to receive service, the law will, and ought to, draw such an inference and imply such authority, and service under such circumstances and upon an agent of that character is sufficient.

When the legislature of Tennessee, under the act of March 22, 1875, permitted the plaintiff in error, a foreign corporation, to do business within the State, on appointing an agent therein upon whom process might be served, and when, in pursuance of such provisions the company entered the State and appointed the agent, no contract was thereby created which would prevent the State from thereafter passing another statute in regard to service of process, and making such statute applicable to all foreign corporations, already doing business within the State.

THE case is stated in the opinion.

Mr. B. M. Estes, with whom was *Mr. Francis Fentress* on the brief, for plaintiff in error.

Mr. Thomas B. Turley and *Mr. Luke E. Wright* for defendant in error.

MR. JUSTICE PECKHAM delivered the opinion of the court.

The plaintiff in error filed its bill against the defendant in error in the chancery court of Shelby County, Tennessee, for the purpose of enjoining her from taking any proceedings under a judgment by default which she had obtained in the State of Tennessee, against the corporation, upon certain policies of insurance, and also for the purpose of obtaining a

decree pronouncing the judgment void and releasing the corporation therefrom.

The ground set forth in the bill, and upon which the complainant sought to have the judgment against it set aside, was that the complainant was a non-resident of the state of Tennessee, had no office or agent there at the time the process was served, and was doing no business in the State, and the person upon whom the process in the action had been served in behalf of the corporation was not its representative in the State, and no process served upon him was in any way effectual to give jurisdiction to the state court over the corporation. The bill also alleged that the judgment, if enforced, would result in taking complainant's property without due process of law, and would violate the Fifth and Fourteenth Amendments of the Constitution of the United States.

The defendant in error herein appeared and answered the bill, and alleged that the judgment she had obtained was a valid and proper judgment, and she denied the allegation in the bill that complainant was doing no business in the State at the time of the service of process, and alleged on the contrary that it was then doing business therein. She asked that the preliminary injunction theretofore granted should be dissolved.

The court of chancery upon the trial gave judgment in favor of the complainant, and decreed that the preliminary injunction granted in the cause should be made perpetual. The defendant appealed to the Supreme Court of the State, where the decree of the court of chancery was reversed, the injunction dissolved, and a judgment granted the defendant in error on the bond executed by the company in obtaining the injunction, for the amount of the original judgment, with interest from its date, together with the costs of the suit for the injunction. The complainant thereupon brought the case here by writ of error.

In addition to the objection that the person upon whom process was served was not such a representative of the company that service of process upon him was sufficient to give the court jurisdiction, the company alleges that under the act of 1875, which will be referred to hereafter, the company

appointed an agent pursuant to its provisions, and that any act subsequently passed relating to the service of process upon any other than the person so appointed could not affect the company, because such act would impair the contract which it alleges was created between the State and the company when it appointed an agent, by its power of attorney, pursuant to the provisions of such act of 1875.

The material facts are as follows: The corporation is a life insurance company, incorporated under the laws of, and having its principal office in, the State of Connecticut. It did a life insurance business in the State of Tennessee from February 1, 1870, until July 1, 1894. On March 22, 1875, the State of Tennessee passed an act to regulate the business of life insurance in that State and by section 12 of the act it was enacted that a company desiring to transact business by any agent or agents in the State should file with the insurance commissioner a power of attorney authorizing the secretary of state to acknowledge service of process for and in behalf of such company at any and all times after a company had first complied with the laws of Tennessee and been regularly admitted, even though such company may subsequently have retired from the State or been excluded; and it was made the duty of the secretary of state, within five days after such service of process by any claimant, to forward by mail an exact copy of such notice to the company. Pursuant to that statute the company duly filed a power of attorney as required, and appointed therein the secretary of state to receive service of process, and that power of attorney the company never in terms altered or revoked.

In 1887 the legislature of Tennessee passed an act, approved March 29, 1887, c. 226, entitled "An act to subject foreign corporations to suit in this State." The first section of this act provided that any foreign corporation found doing business in the State should be subject to suit there, to the same extent that said corporations were by the laws of the State liable to be sued, so far as related to any transaction had in whole or in part within the State, or to any cause of action arising therein, but not otherwise.

The second section provided that any corporation that had any transaction with persons or concerning any property situated in the State, through any agency whatever acting for it within the State, should be held to be doing business within the meaning of the act.

The third and fourth sections of the act are set forth in full in the margin.[1]

The company continued to do business in the State after the passage of this act, and on the 12th day of December, 1889, it insured the life of Benjamin R. Spratley, the husband of the defendant in error, for the term of his life, in the sum

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[1] SEC. 3. *Be it further enacted*, That process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be; and in the absence of such an agent, it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arises took place, or if the agency through which the transaction was had be itself a corporation, then upon any agent of that corporation upon whom process might have been served if it were the defendant. The officer serving the process shall state the facts, upon whom issued, etc., in his return, and service of process so made shall be as effectual as if a corporation of this state were sued, and the process had been served as required by law; but in order that defendant corporation may also have effectual notice, it shall be the duty of the clerk to immediately mail a copy of the process to the home office of the corporation by registered letter, the postage and fees for which shall be taxed as other costs. The clerk shall file with the papers in the cause a certificate of the fact of such mailing, and make a minute thereof upon the docket, and no judgment shall be taken in the case until thirty (30) days after the date of such mailing.

SEC. 4. *Be it further enacted*, That it shall be the duty of the plaintiff to lodge at the home office of the company, with any person found there, a written notice from him or his attorney, stating that such suit has been brought, accompanied by a copy of the process and the return of the officer thereon, of which fact affidavit shall be made by the person lodging the same, stating the facts and with whom the notice was lodged, or else the plaintiff or his attorney shall make an affidavit that he has been prevented from serving such notice by circumstances which should reasonably excuse giving it, which circumstances the affidavit of the plaintiff or his attorney shall particularly state; and no judgment shall be taken until one or the other of these affidavits shall be filed and the court be satisfied that the notice has been given the defendant, or that the excuse for not doing so be sufficient.

of $5000, for the benefit of his wife, the defendant in error, or, in case of her death before payment, to his children, etc. The company also insured the life of Mr. Spratley on the 25th day of February, 1893, in the sum of $3000, in favor of his wife and for her sole use and benefit, with other conditions not material here. These policies were issued through the solicitation and by the procurement of the agent of the company for the States of Tennessee and Kentucky, and who had headquarters at Louisville, Kentucky. He came to Memphis and solicited Mr. Spratley to take the policies, and the application for them was taken by such agent at Memphis. The defendant in error alleges in her answer that the premiums were paid thereon in Tennessee up to the death of Mr. Spratley in February, 1896, but that fact does not otherwise appear. It does appear that all premiums had been paid at the time of the death of Mr. Spratley.

On July 1, 1894, the company ceased issuing any new policies in the State of Tennessee, and withdrew its agents from the State, and on July 21, 1894, notified the state insurance commissioner to that effect. It had, however, a number of policies, other than those issued on the life of Mr. Spratley, outstanding in the State at the time it withdrew, (how many is not stated,) and it continued to receive the premiums on these policies through its former agent for that State, and to settle, by payment or otherwise, the claims upon policies in that State as they fell due.

The former agent resided in Louisville when he received payment of the premiums, and it does not appear that after July, 1894, he was in the State of Tennessee when any payment of premiums was made to him by Tennessee policyholders. He received these payments as agent of the company, and it recognized such payments as sufficient.

Mr. Spratley died in the city of Memphis, in the State of Tennessee, on the 28th of February, 1896, leaving his widow, the defendant in error, surviving him. The two policies were in force at the time of his death. The company, being notified of the death of Mr. Spratley, sent its agent to Memphis to act under its instructions in the investigation and adjust-

ment of the claim. Mr. Chaffee was the agent employed, and he had been employed in the service of the company since the first day of July, 1887. The writing under which he was employed stated that the company employed him "For special service in any matters which may be referred to you, with instructions, during the pleasure of the directors of the company and under the direction of the executive officers; to have your entire time and services, except upon leave of absence; to pay the necessary travelling and hotel expenses incurred in the line of your duty, and to pay you for your time and services at the rate of $2500 per annum; this agreement terminable on the part of the company at the pleasure of the directors and on your part by thirty days' written notice."

The company sent Mr. Chaffee specially to the State of Tennessee for the purpose of investigating into the circumstances of the death of Mr. Spratley and into the merits of the claim made by Mrs. Spratley, and while there he was authorized by the company to compromise the claim made by her upon terms stated in a telegram from the vice president of the company. While Mr. Chaffee was engaged in negotiations with Mrs. Spratley and her brother in relation to her claims, and after she had refused to accept the compromise offered by him in behalf of the company, and on April 15, 1896, he was served, in Memphis, with process against the corporation in an action upon the policies above mentioned.

The attorneys for the plaintiff also sent a notice addressed to the president and directors of the company, together with a copy of the process issued out of the Circuit Court of Shelby County, which notice and copy of process were sent to Mr. Dunham, an attorney at law in the city and county of Hartford, in the State of Connecticut, who, on May 8, 1896, at Hartford, served them upon the company by leaving them in the hands of its vice president, and an affidavit of that fact was made by Mr. Dunham, and filed at the time of the entry of judgment by default in the clerk's office at Memphis. A copy of the writ was also sent by registered letter by John A. Strehl, clerk of the court, addressed to the Connecticut Mutual Life

Insurance Company, Hartford, Connecticut, and an acknowledgment of the receipt of such registered letter, signed by William P. Green on behalf of the Connecticut Mutual Life Insurance Company, was also filed with the judgment.

On July 2, 1896, judgment by default was entered against the defendant, and the judgment recited the above facts in relation to the service of process on Mr. Chaffee, the sending of the registered letter from the clerk of the court, and the notice and copy of process to the attorney, Mr. Dunham, and his service thereof upon the vice president of the company at its office in Hartford, Connecticut. It recited also the fact that the defendant was doing business in Shelby County, Tennessee, but that it had no office or agency therein, and that it had wholly failed to make any appearance, and thereupon the default was entered and judgment went against the defendant for the sum of $8000, being the total amount due on the life insurance contracts or policies described in the declaration, and also for costs.

Upon these facts the question arises as to the validity of the judgment, to set aside which the company has filed this bill. Without considering, for the moment, the objection that there was a contract between the State and the company which could not be impaired, was the service of process upon Mr. Chaffee sufficient to give the court jurisdiction over the corporation?

When the process was served, the act of 1887, above mentioned, was in force.

The third and fourth sections of that act have already been set forth, and they provide that process may be served upon any agent of the corporation, found within the county where the suit is brought, no matter what character of agent such person may be. We are not called upon to decide upon the entire validity of this whole act. The Federal question with which we are now concerned is whether the court obtained jurisdiction to render judgment in the case against the company so that to enforce it would not be taking the property of the company without due process of law. Even though we might be unprepared to say that a service of process upon

"any agent," found within the county, as provided in the statute, would be sufficient in the case of a foreign corporation, the question for us to decide is whether upon the facts of this case the service of process upon the person named was a sufficient service to give jurisdiction to the court over this corporation. If it were, there was due process of law, whatever we might think of the other provisions of the act in relation to the service upon any agent of a corporation, no matter what character of agent the person might be. If the person upon whom process was served in this case was a proper agent of the company, it is immaterial whether the statute of the State also permits a service to be made on some other character of agent which we might not think sufficiently representative to give the court jurisdiction over the corporation. If the service be sufficient in this instance, the corporation could not herein raise the question whether it would be sufficient in some other and different case coming under the provision of the state statute.

In a suit where no property of a corporation is within the State, and the judgment sought is a personal one, it is a material inquiry to ascertain whether the foreign corporation is engaged in doing business within the State; *Goldey* v. *Morning News*, 156 U. S. 519; *Merchants' Manufacturing Co.* v. *Grand Trunk Railway Co.*, 13 Fed. Rep. 358; and if so, the service of process must be upon some agent so far representing the corporation in the State that he may properly be held in law an agent to receive such process in behalf of the corporation. An express authority to receive process is not always necessary.

We think the evidence in this case shows that the company was doing business within the State at the time of this service of process. From 1870 until 1894, it had done an active business throughout the State by its agents therein, and had issued policies of insurance upon the lives of citizens of the State. How many policies it had so issued does not appear. Its action in July, 1894, in assuming to withdraw from the State, was simply a recall of its agents doing business therein, the giving of a notice to the state insurance commissioner, and

a refusal to take any new risks or to issue any new policies within the State. Its outstanding policies were not affected thereby, and it continued to collect the premiums upon them and to pay the losses arising thereunder, and it was doing so at the time of the service of process upon its agent.

The corporation alleged in its bill filed in this suit that the defendant herein was taking garnishee proceedings against its policyholders in the State for the purpose of collecting, as far as possible, the amount of the judgment she had obtained against the corporation, and it gave in its bill the names of some thirteen of such policyholders against whom proceedings had been taken by this defendant. It cannot be said with truth, as we think, that an insurance company does no business within a State unless it have agents therein who are continuously seeking new risks and it is continuing to issue new policies upon such risks. Having succeeded in taking risks in the State through a number of years, it cannot be said to cease doing business therein when it ceases to obtain or ask for new risks or to issue new policies, while at the same time its old policies continue in force and the premiums thereon are continuously paid by the policyholders to an agent residing in another State, and who was once the agent in the State where the policyholders resided. This action on the part of the company constitutes doing business within the State, so far as is necessary, within the meaning of the law upon this subject. And this business was continuing at the time of the service of process on Mr. Chaffee in Memphis.

It is admitted that the person upon whom process was served was an agent of the company. Was he sufficiently representative in his character? He was sent into the State as such agent to investigate in regard to this very claim, and while there he was empowered to compromise it within certain stated terms, leaving him a certain discretion as to the amount. He was authorized to settle the claim for the amount of the reserve "or thereabouts." He did not leave his character as agent when he entered the State. On the contrary, it was as agent, and for the purpose of representing the company therein, that he entered the State, and as agent he was

seeking a compromise of the claim by the authority of the company, and therein representing it. Why was he not such an agent as it would be proper to serve process upon? He had been appointed an agent by the company; his whole time and services were given to the company under an appointment made years previously; he received a salary from the company not dependent upon any particular service at any particular time. The company having issued policies upon the life of an individual who had died, and a claim having been made for payment in accordance with the terms of those policies, the company clothed him with authority to go into the State and in its behalf investigate the facts surrounding the claim, and authority was given him to compromise it upon terms which left to him discretion to some extent as to the amount of payment. He was not a mere agent appointed for each particular case. He was employed generally, by the company, to act in its behalf in all cases of this kind and as directed by the company in each case. Entering the State with this authority, and acting in this capacity, the company itself doing business within the State, it seems to us that he sufficiently represented the company within the principle which calls for the service of process upon a person who is in reality sufficient of a representative to give the court jurisdiction over the company he represents. In view of all the facts, we think it a proper case in which the law would imply, from his appointment and authority, the power to receive service of process in the case which he was attending to.

Taken in connection with the further fact of sending (as provided for in the statute) a copy of the process and notice thereof by registered letter to the home office of the company, and also the personal service upon the company of a copy of the process and notice thereof at its home office, it must be admitted that one of the chief objects of all such kinds of service, namely, notice and knowledge on the part of the company of the commencement of suit against it, is certainly provided for. We do not intimate that mere knowledge or notice as thus provided would be sufficient without a service

on the agent in the State where suit was commenced, but we refer to it as a part of the facts in the case.

In *Lafayette Insurance Company* v. *French*, 18 How. 404, 407, it appeared that a statute of Ohio made provision for service of process on foreign insurance companies in suits founded upon contracts of insurance there made by them with citizens of that State. One of those provisions was that service of process on a resident agent of a foreign corporation should be as effectual as though the same was served upon the principal. In a suit commenced in Ohio against a foreign corporation by service upon its resident agent, the company objected to the validity of that service, and that question came before this court, and Mr. Justice Curtis, in delivering the opinion of the court, said:

"We find nothing in this provision either unreasonable in itself or in conflict with any principle of public law. It cannot be deemed unreasonable that the State of Ohio should endeavor to secure to its citizens a remedy, in their domestic forum, upon this important class of contracts made and to be performed within that State, and fully subject to its laws; nor that proper means should be used to compel foreign corporations, transacting this business of insurance within the State, for their benefit and profit, to answer there for the breach of their contracts of insurance there made and to be performed. Nor do we think the means adopted to effect this object are open to the objection that it is an attempt improperly to extend the jurisdiction of the State beyond its own limits to a person in another State. Process can be served on a corporation only by making service thereof on some one or more of its agents. The law may, and ordinarily does, designate the agent or officer on whom process is to be served. For the purpose of receiving such service, and being bound by it, the corporation is identified with such agent or officer. The corporate power to receive and act on such service, so far as to make it known to the corporation, is thus vested in such officer or agent. Now, when this corporation sent its agent into Ohio, with authority to make contracts of insurance there, the corporation must be taken to assent to the condition upon which alone such busi-

ness could be there transacted by them; that condition being, that an agent, to make contracts, should also be the agent of the corporation to receive service of process in suits on such contracts; and, in legal contemplation, the appointment of such an agent clothed him with power to receive notice, for and on behalf of the corporation, as effectually as if he were designated in the charter as the officer on whom process was to be served; or, as if he had received from the president and directors a power of attorney to that effect. The process was served within the limits and jurisdiction of Ohio, upon a person qualified by law to represent the corporation there in respect to such service; and notice to him was notice to the corporation which he there represented, and for whom he was empowered to take notice."

The act did not provide for an express consent to receive such service, on the part of the company. The consent was implied because of the company entering the State and doing business therein subject to the provisions of the act.

It is true that in the above case the person upon whom service of process was made is stated to have been a resident agent of the company; but the mere fact of residence is not material, (other things being sufficient,) provided he was in the State representing the company and clothed with power as an agent of the company to so represent it. His agency might be sufficient in such event, although he was not a resident of the State. It is also true that the agent in that case was an agent with power to make contracts of insurance in behalf of the corporation in that State, and from that fact in connection with the statute, the court inferred the further fact of an implied power to receive service of process in behalf of the corporation. The agent had not, so far as the case shows, received any express authority from the company to receive service of process. The court does not hold nor is it intimated that none but an agent who has authority to make contracts of insurance in behalf of the company could be held to represent it for the purpose of service of process upon it. It is a question simply whether a power to receive service of process can reasonably and fairly be implied from the kind and char-

acter of agent employed. And while the court held that an agent with power to contract was, in legal contemplation, clothed with power to receive notice for and on behalf of the corporation as effectually as if he were designated in the charter as the officer upon whom process was to be served, we think it is not an unnatural or an improper inference, from the facts in the case at bar, to infer a power on the part of this agent, thus sent into the State by the company, to receive notice on its behalf in the same manner and to the same extent that the agent in the case cited was assumed to have. In such case it is not material that the officers of the corporation deny that the agent was expressly given such power, or assert that it was withheld from him. The question turns upon the character of the agent, whether he is such that the law will imply the power and impute the authority to him, and if he be that kind of an agent, the implication will be made notwithstanding a denial of authority on the part of the other officers of the corporation.

This case is unlike that of *St. Clair* v. *Cox*, 106 U. S. 350. There the record of the judgment, which was held to have been properly excluded, did not (and there is no evidence which did) show that the corporation was doing business in the State at the time of the service of process on the person said to be its agent. Nor did it appear that the person upon whom the process was served bore such relations to the corporation as would justify the service upon him as its agent. In the course of the opinion in that case, Mr. Justice Field, speaking for the court, said:

"It is sufficient to observe that we are of opinion that when service is made within the State upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record — either in the application for the writ, or accompanying its service, or in the pleadings or in the finding of the court — that the corporation was engaged in business in the State. The transaction of business by the corporation in the State, general or special, appearing, and a certificate of service of process by the proper officer

on a person who is its agent there, would, in our opinion, be sufficient *prima facie* evidence that the agent represented the company in the business. It would then be open, when the record is offered as evidence in another State, to show that the agent stood in no representative character to the company, that his duties were limited to those of a subordinate employé, or to a particular transaction, or that his agency had ceased when the matter in suit arose."

Here we have the essentials named in the above extract from the opinion of the court in *St. Clair* v. *Cox*. We have a foreign corporation doing business in the State of Tennessee. We have its agent present within the State, representing it by its authority in regard to the very claim in dispute, and with authority to compromise it within certain limits, and his general authority not limited to a particular transaction. On the contrary, as seen from his written appointment, his agency for the company was a continuous one, and had been such since 1887, although, of course, his agency was limited to a certain department of the business of the corporation.

The case does not hold that a foreign corporation cannot be sued in any State unless it be doing business there and has appointed an agent expressly that process might be served upon him for it. Speaking of the service of process upon an agent, the learned justice thus continued:

"In the State where a corporation is formed, it is not difficult to ascertain who are authorized to represent and act for it. Its charter or the statutes of the State will indicate in whose hands the control and management of its affairs are placed. Directors are readily found, as also the officers appointed by them to manage its business. But the moment the boundary of the State is passed difficulties arise; it is not so easy to determine who represents the corporation there, and under what circumstances service on them will bind it."

This language does not confine the service to an agent who has been expressly authorized to receive service of process upon him in behalf of the foreign corporation. If that were true, it would be easy enough to determine whether the person represented the corporation, as unless he had been so

authorized he would not be its agent in that matter. In the absence of any express authority, the question depends upon a review of the surrounding facts and upon the inferences which the court might properly draw from them. If it appear that there is a law of the State in respect to the service of process on foreign corporations and that the character of the agency is such as to render it fair, reasonable and just to imply an authority on the part of the agent to receive service, the law will and ought to draw such an inference and to imply such authority, and service under such circumstances and upon an agent of that character would be sufficient.

It was held in *Pennoyer* v. *Neff*, 95 U. S. 714, that a service by publication in an action *in personam* against an individual, where the defendant was a non-resident and had no property within the State, and the suit was brought simply to determine his personal rights and obligations, was ineffectual for any purpose. The case has no bearing upon the question here presented.

In *Mexican Central Railway* v. *Pinkney*, 149 U. S. 194, it was held that the person upon whom process was served in the State of Texas was not a "local agent" within the meaning of that term as contained in the Texas statute. It was also held that the special appearance of the company for the purpose of objecting that the service of process was not good did not, in the Federal courts, confer jurisdiction as in case of a general appearance. There is nothing in the case affecting this question.

In *Maxwell* v. *Atchison, Texas &c. Railroad*, 34 Fed. Rep. 286, the opinion in which was delivered by Judge Brown, United States District Judge of Michigan, now one of the Justices of this court, the decision was placed upon the ground that the business which the defendant carried on in Michigan was not of such a character as to make it amenable to suits within that jurisdiction, especially where the cause of action in the case arose within the State of Kansas, and the court also held that the individual upon whom the process was served was not an officer or managing agent of the railroad company within the meaning of the act of the legislature, nor was

he even a ticket agent of the company; that he was a mere runner, and that service of process upon him for a cause of action arising in Kansas gave no jurisdiction to the court.

In *United States* v. *American Bell Telephone Co.*, 29 Fed. Rep. 17, Judge Jackson stated the three conditions necessary to give a court jurisdiction *in personam* over a foreign corporation: First, it must appear that the corporation was carrying on its business in the State where process was served on its agent; second, that the business was transacted or managed by some agent or officer appointed by or representing the corporation in such State; third, the existence of some local law making such corporation amenable to suit there as a condition, express or implied, of doing business in the State.

In this case the company was doing business in the State. The agent was in the State under the authority and by the appointment of the company. He was authorized to inquire into and compromise the particular matters in dispute between the corporation and the policyholder, and he was no mere special employé engaged by the company for this particular purpose. And there was a local law, that of 1887, providing for service. It has been recently held in this court that as to a Circuit Court of the United States, where a corporation is doing business in a State other than the one of its incorporation, service may sometimes be made upon its regularly appointed agents there, even in the absence of a state statute conferring such authority. *Barrow Steamship Co.* v. *Kane*, 170 U. S. 100.

Although the legislature, by the act of 1875, provided for service of process upon a particular person, (the secretary of state,) in behalf of a foreign corporation, and the company had, pursuant to the provisions of the act, duly appointed that officer its agent to receive process for it, nevertheless the legislature provided, by law in 1887, for service upon other agents, and the company continued thereafter to do business in the State. Continuing to do business, the company impliedly assented to the terms of that statute, at least to the extent of consenting to the service of process upon an

agent so far representative in character that the law would imply authority on his part to receive such service within the State. *Merchants' Manufacturing Co.* v. *Grand Trunk Railway*, 13 Fed. Rep. 358, 359. When the service of which plaintiff in error complains was made, the act of 1875 had been repealed by chapter 160 of the laws of 1895, and the company had never appointed an agent under chapter 166 of the laws of that year. There was, therefore, no one upon whom process could be served in behalf of the company, excepting under the act of 1887, unless the plaintiff in error be right in the claim that, by appointing the secretary of state its agent to receive process under the act of 1875, a contract was created, and the secretary of state remained such agent, notwithstanding subsequent statutes regulating the subject, or even repealing the act. We will refer to that claim hereafter. If by the statute of the State provision were made for the appointment of an agent by the company, upon whom process might be served, and the company had appointed such an agent, and there was no other statute authorizing service of process upon an agent of the company other than the one so appointed, we do not say that service upon any other agent of the company would be good. This is not such a case, and the question is not here open for discussion.

A vast mass of business is now done throughout the country by corporations which are chartered by States other than those in which they are transacting part of their business, and justice requires that some fair and reasonable means should exist for bringing such corporations within the jurisdiction of the courts of the State where the business was done, out of which the dispute arises.

It was well said in *Railroad Company* v. *Harris*, 12 Wall. 65, 83, by Mr. Justice Swayne, in speaking for the court, in regard to service on an agent, that "When this suit was commenced, if the theory maintained by the counsel for the plaintiff in error be correct, however large or small the cause of action, and whether it were a proper one for legal or equitable cognizance, there could be no legal redress short of the seat of the company in another State. In many instances the

cost of the remedy would have largely exceeded the value of its fruits. In suits local in their character, both at law and in equity, there could be no relief. The result would be, to a large extent, immunity from all legal responsibility." The court in view of these facts was of opinion that Congress intended no such result.

In holding the service of process upon this particular agent sufficient in this instance and so far as the character of the agent is concerned, we do not, as we have already intimated, hold that service upon any agent mentioned in the act of 1887 would be good. That question is not before us.

Upon the question relative to the alleged creation of a contract between the State and the company, by the appointment of the secretary of state as its agent under the act of 1875, to receive process for it, we have no doubt.

The act of 1875 stated the terms, upon compliance with which a foreign corporation should be permitted to do business within the State of Tennessee. There was however no contract that those conditions should never be altered, and when pursuant to the provisions of the act of 1875 this power of attorney was given by the corporation, the State did not thereby contract that during all of the period within which the company might do business within that State no alteration or modification should be made regarding the conditions as to the service of process upon the company. When therefore in 1887 the legislature passed another act and therein provided for the service of process, no contract between the State and the corporation was violated thereby, or any of its obligations in anywise impaired, for the reason that no contract had ever existed. Instead of a contract, it was a mere license given by the State to a foreign corporation to do business within its limits upon complying with the rules and regulations provided for by law. That law the State was entirely competent to change at any time by a subsequent statute without being amenable to the charge that such subsequent statute impaired the obligation of a contract between the State and the foreign corporation doing business within its borders under the former act.

Statutes of this kind reflect and execute the general policy of the State upon matters of public interest, and each subsequent legislature has equal power to legislate upon the same subject. The legislature has power at any time to repeal or modify the act granting such permission, making proper provision when necessary in regard to the rights of property of the company already acquired, and protecting such rights from any illegal interference or injury. *Douglas* v. *Kentucky*, 168 U. S. 488. The cases showing the right of a State to grant or refuse permission to a foreign corporation of this kind to do business within its limits are collected in *Hooper* v. *California*, 155 U. S. 648, 652.

Having the right to impose such terms as it may see fit upon a corporation of this kind as a condition upon which it will permit the corporation to do business within its borders, the State is not thereafter and perpetually confined to those conditions which it made at the time that a foreign corporation may have availed itself of the right given by the State, but it may alter them at its pleasure. In all such cases there can be no contract springing from a compliance with the terms of the act, and no irrepealable law, because they are what is termed "governmental subjects," and hence within the category which permits the legislature of a State to legislate upon those subjects from time to time as the public interests may seem to it to require.

As these statutes involve public interests, legislation regarding them are necessarily public laws, and as stated in *Newton* v. *Commissioners*, 100 U. S. 548, 559; "Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality. This must necessarily be so in the nature of things. It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil."

Syllabus.

The same principle is found in the following cases: *Fertilizing Company* v. *Hyde Park*, 97 U. S. 659; *Butchers' Union Company* v. *Crescent City*, 111 U. S. 746; *Boyd* v. *Alabama*, 94 U. S. 645; *Douglas* v. *Kentucky*, 168 U. S. 488.

When the legislature of Tennessee therefore permitted the company to do business within its State on appointing an agent therein upon whom process might be served, and when in pursuance of such provisions the company entered the State and appointed the agent, no contract was thereby created which would prevent the State from thereafter passing another statute in regard to service of process, and making such statute applicable to a company already doing business in the State. In other words, no contract was created by the fact that the company availed itself of the permission to do business within the State under the provisions of the act of 1875.

Upon the case as presented in this record, we are of opinion that the service upon the person in question was a good service in behalf of the corporation. The judgment of the Supreme Court of Tennessee is therefore

Affirmed.

Mr. Justice Harlan did not sit in and took no part in the decision of this case.